Destiny Special Sustainability Zone Development Agreement

This Agreement (the "Development Agreement"), dated [xx] December 2026, is made and entered into by and between:

> the **Government of the Federation of Saint Christopher and Nevis ("SKN Government")**, located at Government Headquarters, Church Street, Basseterre, Saint Christopher, on behalf of and representing the Federation of Saint Christopher and Nevis ("SKN"), and acting through the Honourable Prime Minister; and
>
> the **Nevis Island Administration ("NIA")**, located at Pinney's Estate, Charlestown, Island of Nevis, on behalf of and representing the Island of Nevis ("Nevis"), and acting through the Honourable Premier;
>
> together the "**Government Parties**";

and

> **Destiny International Limited ("Destiny International")**, a company duly incorporated under Isle of Man Companies Acts 1931 – 2004, with its registered address at 41-43 Victoria Street, Douglas, Isle of Man, IM1 2LF; and
>
> **South Nevis Limited ("SN Ltd")**, a company duly incorporated under the Companies Ordinance, Cap. 7.06 (N) of the Revised Laws of Saint Christopher and Nevis (Nevis Ordinances), Company No. 18 of 2024, with its registered address at Central Government Road, Charlestown, PO Box 175, Nevis;
>
> together the "**Destiny Parties**" or "**Destiny**";
>
> together also the "**Zone Developer**", within the meaning of the Special Sustainability Zones Authorisation Act;

individually referred to as a party ("Party") and jointly referred to as the parties ("Parties").

Whereas:

A. the Parties jointly desire to bring sustainable benefit to the Federation of Saint Christopher and Nevis;

B. Destiny intends to establish and develop a special sustainability zone ("Destiny Special Sustainability Zone" or "Zone") in the Island of Nevis, pursuant to the Special Sustainability Zones Authorisation Act ("Authorisation Act");

C. the Government Parties intend to support the setup and development of the Destiny Special Sustainability Zone; and

D. all Parties agree that, for the purposes of the development of the Zone, time is of the essence.

And whereas all conditions precedent as defined in Section 5 of the Authorisation Act have been met by Destiny having duly and satisfactorily provided:

I. an economic analysis, forecasting that the proposed Destiny Special Sustainability Zone is likely to generate long term economic opportunities, create permanent employment, attract foreign direct investment, and generate revenue for the benefit of the people of Saint Christopher and Nevis for at least ten years after operationalisation;

II. plans to develop the necessary infrastructure, utilities, and facilities within the Destiny Special Sustainability Zone to meet the requirements set out in Section 5(1)(b) of the Authorisation Act;

III. demonstration of the capability as well as financial and technical capacity and all other qualifications required to develop and operate the Destiny Special Sustainability Zone; and

IV. evidence of ownership of, or agreement to purchase, real property constituting the land-based part of the Area, as set out in Annex 1(a) of this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, and undertakings contained hereafter, the Parties hereby agree to be legally bound by the terms and conditions of this Agreement, as set forth hereafter:

1. Establishment of the Destiny Special Sustainability Zone

1.1. The Parties shall establish the Destiny Special Sustainability Zone and, for this purpose, herewith enter into this Development Agreement for the Zone, pursuant to the provisions of the Authorisation Act.

1.2. Unless expressly stated otherwise or required by context, terms defined in the Authorisation Act shall bear the same meaning when used in this Agreement.

1.3. The Zone and its Governance shall be structured and operated so as to advance the objectives set out in Section 3 of the Authorisation Act.

1.4. The Zone shall be established within the Area, comprised of the following:

1.4.1. the real property designated in Annex 1(a) of this Agreement; and

1.4.2. the seabed leased to SN Ltd by the Crown as of the Activation Date, pursuant to lease arrangements in the form set out in Annex 2 to this Agreement (the “Seabed Lease Agreement”).

1.5. Pursuant to Section 6(2)(h) of the Authorisation Act, the Area may be expanded from time to time in accordance with, and subject to, the parameters and conditions precedent set forth in Annex 1(b) to this Agreement. For the avoidance of doubt, Destiny may transfer property rights in real property it owns within the Area, without such sales affecting the Area status of the real property concerned. The same shall apply to subsequent transfers of such real property among third parties.

1.6. In accordance with Section 7(1) of the Authorisation Act, this Agreement, including its Annexes, has been approved and ratified by the Nevis Island Assembly through the Destiny Special Sustainability Zone Endorsement Ordinance (the “Destiny Endorsement Ordinance”) and by the National

Assembly through the Destiny Special Sustainability Zone Ratification Act (the "Destiny Ratification Act"). Both Enactments have incorporated the full text of this Agreement and provided for its ratification to take effect upon its execution by the Parties, without the need for further legislative approval.

1.7. Following the execution of this Agreement, the Premier shall, in accordance with Section 7(2)(b) of the Authorisation Act, declare the Area to be a Special Sustainability Zone by Order published in the Official Gazette of Saint Christopher and Nevis (the "Gazette"). The Order shall be published within seven (7) days after the Effective Date, as defined in Clause 8.1, and shall specify the Activation Date in accordance with Clause 1.8. The date of publication of the Order shall constitute the "Order Publication Date" or "Publication Date".

1.8. The Zone shall be formally and automatically constituted, with full legal personality, Zone Governance, and all associated concessions, as of 05 May 2027 or the Publication Date, whichever comes later (the "Activation Date").

1.9. Destiny expressly acknowledges the right of the Government Parties to regulate the acquisition and use of real property situated outside the Area. The Government Parties, in exercising such right, shall refrain from taking any action that would materially frustrate or undermine the objectives of this Agreement, including in respect of any portion of the Expansion Area not yet incorporated into the Area.

1.10. Destiny expressly acknowledges the right of the Government Parties to regulate elections related to the National Assembly or the Nevis Island Assembly according to the Constitution.

1.11. In order to facilitate site preparation prior to the Activation Date, all planning and environmental Enactments shall be disapplied within the Area as of the Publication Date, save for the National Conservation and Environmental Management Act, 2025, as modified by Annex 5. The Parties shall use their reasonable endeavours to agree, prior to the Activation Date, upon general principles concerning any environmentally or historically sensitive areas within the Area, having regard to Annex 7. For this purpose, the Parties shall, within fourteen (14) days after the Effective Date, establish a working group comprising representatives of each Party.

1.12. The concessions granted to the Zone constitute servitudes benefitting all real property in the Area.

2. Principles of the Zone

The Parties agree that the Zone shall be planned and executed pursuant to the following principles:

2.1. Sustainability and Responsibility

2.1.1. The Zone shall respect the natural beauty and integrity of its Area, both terrestrial and marine.

2.1.2. The Zone shall place a special emphasis on ecological sustainability and related solutions and offerings.

2.1.3. The Zone shall aim to minimise new carbon emissions through a focus on renewable energy sources and reduced dependency on fossil fuels.

2.1.4. The Zone shall develop climate-resilient infrastructure and housing, to create safe and sustainable living environments.

2.1.5. The Zone shall prioritise water security, ensuring reliable access to clean and safe water through infrastructure investment.

2.1.6. Destiny commits to the sustainable practices as regards the management of its energy, water and waste as set out more particularly in Annex 7.

2.1.7. The Zone shall substantially preserve historically significant structures within the Area including but not limited to the Saddle Hill Fort, ensuring they are not destroyed or removed.

2.2. Zone Governance

2.2.1. The Zone shall be governed in accordance with the objectives of the Destiny Special Sustainability Zone and the local rules and administrative methods set forth in this Agreement.

2.2.2. The Parties expressly acknowledge that the following matters are within the exclusive legislative, governance, and administrative domain and control of the Government of Saint Christopher and Nevis, and the Nevis Island Administration, where applicable, within the Zone, with the specific rules of the Zone, referred to herein as “Code of Destiny” or “CoD” and set out in Annex 3 of this Agreement, being considered consistent with this acknowledgement as adopted:

2.2.2.1. foreign affairs, including treaty negotiation, execution, and ratification;

2.2.2.2. military defence;

2.2.2.3. citizenship and residency;

2.2.2.4. elections related to the National Assembly or the Nevis Island Assembly and registration of voters;

2.2.2.5. jurisdiction of the Eastern Caribbean Supreme Court, Caribbean Court of Justice, and Judicial Committee of the Privy Council, where stipulated as exclusive jurisdiction by the Constitution; and

2.2.2.6. any obligation, right, or responsibility not transferable to any other person or body under the Constitution including but not

limited to the powers granted by the Constitution to the Director of Public Prosecutions and the Commissioner of Police.

2.2.3. The Zone's property owners ("Property Owners") may propose zone laws applicable in the Area ("Destiny Zone Laws" or "Zone Laws") in accordance with Chapter 4 of the Code of Destiny, provided that for any new Zone Laws, or amendments to be effective, they shall be contained in and ratified by a law passed by the National Assembly of Saint Christopher and Nevis, and in an Ordinance by the Nevis Island Assembly, in line with the Coordination and Pathway Arrangements set out in Annex 4. The Property Owners may further adopt, amend, and repeal bylaws applicable within the Zone ("Zone Bylaws") by majority vote in accordance with the voting rights and procedures established under the Code of Destiny, provided that such Zone Bylaws are consistent with all applicable Enactments, including Destiny Zone Laws, and with the provisions of this Agreement. For the avoidance of doubt, Zone Bylaws shall not require legislative ratification.

2.2.4. The Code of Destiny, as set out in Annex 3, and ratified by, and as part of, the Destiny Ratification Act and the Destiny Endorsement Ordinance, shall become the first Destiny Zone Law, taking effect at the Activation Date, unless the Destiny Parties request, and the Government Parties expressly agree to, a different date.

2.2.5. The Enactments of Saint Christopher and Nevis, as amended from time to time, and as comprehensively listed according to Annex 5 (Clause 1), shall continue to apply beyond the Activation Date, except to the extent that:

2.2.5.1. an Enactment is explicitly disapplied in whole or amended in Annex 5 (Clause 2) of this Agreement, or

2.2.5.2. an Enactment, or any part thereof, conflicts with, or otherwise addresses the same subject matter as, a Destiny Zone Law or this Agreement, in which case the Destiny Zone Law or this Agreement, respectively, shall prevail.

2.2.6. Enactments coming into force after the Activation Date shall also apply in the Zone, unless they are explicitly exempted or fall under Clause 2.2.5.2. Where a planned Enactment may reasonably be expected to materially affect the Zone or the rights, obligations, or legitimate interests of the Property Owners, the SKN Government or NIA, as applicable, shall, in good time and as practicable, consult with representatives of the Property Owners. Any concerns raised during such consultations shall be considered by the SKN Government or NIA, respectively, in good faith.

2.3. Fiscal Self-Sufficiency

2.3.1. The Zone shall benefit from fiscal self-management and self-responsibility.

2.3.2. The Zone, and any person or activity within the Zone, shall not be subject to any Government Charges.

2.3.3. The transit of goods to the Zone through the territory of Saint Christopher and Nevis shall not be subject to any Government Charges unless explicitly agreed in writing otherwise and the customs authorities of Saint Christopher and Nevis shall facilitate seamless and efficient passage in bond, unless explicitly agreed otherwise. For the avoidance of doubt, this provision shall apply from the Effective Date.

2.4. Good Conduct and Due Diligence

2.4.1. The Zone shall operate in a manner that promotes and safeguards lawful conduct in community, business, and personal affairs.

2.4.2. Destiny shall conduct appropriate due diligence in respect of investors, property purchasers, and residents of the Zone, and shall take reasonable steps to ensure that persons admitted to the Zone are reputable individuals or entities engaged in lawful activities.

3. Specific Legislative and Regulatory Provisions for the Zone

The Parties agree that the following specific provisions shall apply to and within the Zone:

3.1. Civil and Criminal Provisions

3.1.1. Within the Zone, the provisions of the Code of Destiny, as set out in Annex 3, shall apply exclusively.

3.1.2. The SKN Government commits to the development of a modern, state-of-the-art penal code (the “New Penal Code”) for the Federation of Saint Christopher and Nevis, reflecting international best practices and the highest standards of criminal justice and protection of fundamental rights.

3.1.3. The Destiny Parties shall, at their cost, nominate and make available internationally recognised experts to work jointly with the SKN Government in drafting the New Penal Code. The NIA shall actively cooperate in and contribute to this drafting process.

3.1.4. The Parties shall use their respective best efforts to secure the enactment and entry into force of the New Penal Code, including its incorporation into the Code of Destiny, at the earliest practicable date, and in any event no later than eighteen (18) months after the Effective Date.

3.2. Jurisdiction

3.2.1. Jurisdiction over all matters related to and within the Zone, and the manner of their execution, shall be determined according to the Code of Destiny.

3.2.2. Only jurisdictional matters explicitly determined differently by the Constitution shall be exempted from Clause 3.2.1.

3.3. Prosecution

3.3.1. The Director of Public Prosecutions may act as prosecutor under the Code of Destiny and exercise those privileges granted by the Constitution. Where he does so, he shall do so according to the Code of Destiny, provided that the Code of Destiny does not conflict with the Constitution.

3.4. Law Enforcement and Security

3.4.1. The Zone shall provide for its own public safety and security services and rapid emergency response mechanisms and bear exclusive responsibility for enforcing Destiny Zone Laws and applicable Enactments.

3.4.2. Acknowledging that the Zone is intended to attract high-net-worth individuals, and acknowledging the associated risks, the Zone shall support the Government Parties in mitigating risks relating to money laundering, terrorist financing, and related financial crime.

3.5. Firearms and Ammunition

3.5.1. Subject to security reviews required by the competent authorities of Saint Christopher and Nevis, to compliance with requirements referred to in Clause 3.5.2 below, and to any additional requirements stipulated under the Code of Destiny or another Zone Law, the import, export, manufacture, sale, acquisition, possession, carrying, storage, transfer, and use of firearms and ammunition shall be lawful within the Zone.

3.5.2. Unless expressly provided otherwise in the Development Agreement or a Zone Law, the provisions of federal firearms legislation of Saint Christopher and Nevis, as applicable from time to time, shall also apply within the Zone. The Commissioner of Police of the Royal Saint Christopher and Nevis Police Force shall retain full authority and responsibility.

3.5.3. The application and administration of the pre-conditions, requirements, and procedural rules shall be executed in line with the arrangements set out in Annex 4.

3.6. The Property Owners may, in accordance with the Code of Destiny, adopt additional rules, restrictions, or requirements governing firearms and ammunition in the Zone, provided that such rules, restrictions, or requirements are supplementary to, and do not derogate from, the requirements applicable under Clauses 3.5.1 to 3.5.3.

3.7. Employee Protection Standards

3.7.1. All persons employed within the Zone, irrespective of nationality, immigration status, employer or contractual arrangement, shall be entitled to minimum employee protection standards.

3.7.2. Such minimum standards shall include:

3.7.2.1. protection against forced or compulsory labour, human trafficking, and all forms of modern slavery;

3.7.2.2. the prohibition of child labour in accordance with internationally recognised minimum standards;

3.7.2.3. equality of opportunity and treatment in employment, including protection against unlawful discrimination;

3.7.2.4. safe and healthy working conditions;

3.7.2.5. fair and timely payment of remuneration for work performed;

3.7.2.6. reasonable limits on working hours and appropriate periods of rest;

3.7.2.7. protection against abuse, harassment and exploitative working conditions; and

3.7.2.8. access to fair, effective, and impartial resolution of labour-related disputes.

3.7.3. The Parties acknowledge that these protections constitute minimum standards that may be supplemented. The Code of Destiny provides explicit and implicit protections with respect to minimum standards, and shall be interpreted accordingly.

3.7.4. Independently of the foregoing, the Destiny Parties undertake to provide the Government Parties with expert support in the development of a new Labour Code for Saint Christopher and Nevis.

3.8. Social Insurance

3.8.1. Any person employed or self-employed within the Zone shall be exempt from classification as an insured person under Section 19(1)(a) or (b) of the Social Security Act. Notwithstanding the foregoing, any person may elect to become a voluntarily insured person under Section 19(1)(c) of the Social Security Act and self-register accordingly, and the Government Parties shall use their reasonable efforts to ensure the enforcement of that provision.

3.8.2. Destiny shall use its reasonable endeavours to ensure that any person residing in the Federation of Saint Christopher and Nevis, but outside the Area, and intending to enter the Area to perform paid-for services,

shall have self-registered. The Government Parties shall use their reasonable endeavours to educate the working population of the Federation of Saint Christopher and Nevis of this opportunity.

3.8.3. If economic activities are conducted both within the Zone and elsewhere in the Federation of Saint Christopher and Nevis, the exemption under Clause 3.7.1 shall apply solely to the portion of activity carried out within the Zone.

3.9. Access

3.9.1. The Parties commit to ensuring a seamless access and departure experience to and from the Zone including but not limited to the beaches, heritage sites, and waters.

3.10. Coordination and Pathways

Without prejudice to the other provisions of this Clause 3, the Parties agree that they shall, pursuant to Annex 4:

3.10.1. coordinate matters related to application of Enactments, criminal prosecutions, law enforcement, perimeter control, firearms and ammunition, employee protection, fishery, and telecommunications; and

3.10.2. follow the pathways set out for legislative ratification and judicial review and appointments.

3.11. International Treaties

3.11.1. Obligations of the Federation of Saint Christopher and Nevis under international law arising from ratified treaties, international agreements, and international conventions shall apply to the Area.

3.11.2. The SKN Government shall, through the Destiny Parties, notify the Property Owners of any proposal to conclude, accede to, ratify, amend, or otherwise become bound by any treaty, international agreement, convention, or other international instrument after the Effective Date. Where any such instrument may reasonably be expected to materially affect the Zone or the rights, obligations, or legitimate interests of the Property Owners, the SKN Government shall, in good time, consult with representatives of the Property Owners. Any concerns raised during such consultations shall be considered by the SKN Government in good faith.

3.11.3. Where a treaty, international agreement, or international convention is applicable in the Zone, the implementation and procedural execution of its provisions in the Zone shall fall within the competence of the Zone and shall be carried out in accordance with the Code of Destiny, in a manner consistent with the obligations of the Federation of Saint Christopher and Nevis under international law.

3.12. Transport within the Zone

3.12.1. The Zone shall promote a sustainable transport system, with particular emphasis on autonomous modes of transport, including vehicles, and the infrastructure required for their operation.

3.12.2. The operation of the Zone's internal sustainable transport system, including the use of its designated infrastructure, shall not be subject to the Vehicles and Road Traffic Act, Cap. 15.06, or regulations made thereunder, and may be governed by specific rules adopted in accordance with the Code of Destiny.

3.12.3. For 2 years from the Activation Date, the Vehicles and Road Traffic Act, Cap. 15.06, and regulations made thereunder shall continue to apply to motor vehicles and their drivers using roads within the Area designated by the Zone for general motor vehicle traffic.

3.12.4. The Vehicles and Road Traffic Act, Cap. 15.06, and regulations made thereunder shall also continue to apply to motor vehicles or drivers associated with the Zone when such vehicles are operated, or such persons drive, outside the Zone.

3.13. Public Health

3.13.1. The Parties recognize the importance of maintaining and protecting public health across Saint Christopher and Nevis.

3.13.2. The Parties shall not violate the protection of individual medical autonomy, informed consent, and freedom of conscience within the Zone.

4. Commitments by Destiny to the Government Parties

4.1. Destiny hereby represents and warrants to the Government Parties its full commitment to the Zone and to the principles set out in Clause 2. Destiny undertakes to act in good faith, in a spirit of cooperation, and in alignment with those principles throughout the duration of this Agreement.

4.2. SN Ltd shall pay the Crown for the lease of seabed, and meet other seabed related obligations, according to the terms and conditions of the Seabed Lease Agreement as set out in Annex 2.

4.3. Destiny commits that it will:

4.3.1. use all its reasonable efforts to meet the milestones and timelines set out in Annex 6;

4.3.2. use all its reasonable efforts to meet the environmental, social, transparency, and development commitments set out in Annex 7;

4.3.3. ensure that the Zone has a private security service; and

4.3.4. not license or otherwise approve the establishment and operation of a banking business, as defined in Section 2 of the Banking Act of Saint Christopher and Nevis (Cap. 21.01) as of the Effective Date, operating fiat currency accounts. For the avoidance of doubt, and the purposes of this Agreement, the term “banking business” in this Clause shall not extend to, or include, any entity, platform, or arrangement engaged primarily or exclusively in crypto-finance, virtual asset services, or activities relating to digital tokens, cryptocurrencies, or other forms of decentralised finance.

4.4. Destiny agrees that it shall encourage its contractors and other engaged parties to give priority to the employment of qualified (i) residents of Nevis and (ii) other citizens of the Federation of Saint Christopher and Nevis. In addition, Destiny shall, in good faith and in consultation with the Government Parties, use reasonable endeavours to explore and support practical measures designed to assist citizens in identifying and accessing suitable employment opportunities arising within, or in connection with, the Zone.

4.5. For a period of ten (10) years following the Effective Date or until such earlier date as the milestones set out in Annex 6 have been achieved, Destiny shall submit semi-annual progress reports to the Government Parties. The reports shall include, but not be limited to, progress against the milestones described in Annex 6.

4.6. The Destiny Parties shall not develop a commercial cargo or cruise port within the Area or the Expansion Area, and shall utilise the existing or any expanded commercial cargo or cruise ports within the Federation of Saint Christopher and Nevis, save as otherwise agreed in writing from time to time by any of the Government Parties with Destiny.

4.7. The Destiny Parties shall ensure that census and other statistical information, as required from other parts of Saint Christopher and Nevis under the Statistics Act, as applicable from time to time, shall be provided to the relevant authorities of Saint Christopher and Nevis in a timely and accurate fashion.

5. Contributions by the Government Parties

5.1. The Government Parties hereby represent and warrant to Destiny their full commitment to the Zone and to the principles set out in Clause 2 as well as to the arrangements in Clause 3. The Government Parties undertake to act in good faith, in a spirit of cooperation, and in alignment with those principles throughout the duration of this Agreement.

5.2. The Government Parties shall use their best efforts to establish and uphold the concessions granted to the Zone, to support the development of the Zone, and to refrain from activities that negatively and materially affect the Zone. This shall include, but not be limited to, ensuring the timely issuance of all relevant Government permits, licences, and approvals connected to this Agreement and the rights granted by it, as well as promptly obtaining the ratifications set out in Clauses 2.2.3 and 3.9.2.

5.3. The Government Parties hereby unconditionally guarantee to the Destiny Parties, as well as subsidiaries and affiliates of the Destiny Parties from time to time, provided they remain under the same majority ownership or control as any of the Destiny Parties, a full exemption from all Government Charges from the Effective Date onwards except as provided in any other agreement between any of the Government Parties and Destiny.

6. Stability and Investor Protection

6.1. *Legal and Regulatory Stability:* The Government Parties hereby irrevocably undertake that, for the duration of this Agreement and any extension thereof, the legal, fiscal, and regulatory framework applicable to the Zone and/or to Destiny shall not be amended, repealed, or modified in any manner that would materially and adversely affect the rights, obligations, or economic benefits of the Zone and/or Destiny.

6.2. *Remedy in Case of Breaches:* If either or both Government Parties commit a breach of this Agreement that materially and adversely affects any concession granted to the Zone or otherwise constitutes a material violation of any provision of this Agreement, and if, in the reasonable opinion of Destiny International, such breach significantly undermines the viability of the Zone or its attractiveness to investors, then Destiny International shall provide written notice to the Government Party or Parties in breach. The breaching Party or Parties shall have a period of ninety (90) days from the date of such notice to cure the breach to the reasonable satisfaction of Destiny International and shall, during such period, use their best efforts to mitigate the adverse effect of the breach on Destiny, investors in the Zone and the holder of any concession granted to the Zone.

6.3. *Temporary Suspension of Payments:* If, after issuance of notice pursuant to Clause 6.2, the breach in question is not remedied to the reasonable satisfaction of Destiny International within ninety (90) days, Destiny may, at its sole discretion, suspend any and all payments due to the relevant Government Party under this Agreement. Such suspension shall remain in effect until the breach has been fully and effectively cured. Any suspension exercised under this Clause shall be without prejudice to, and shall not constitute a condition precedent to, Destiny's right to invoke termination under Clauses 8.2 to 8.9.

6.4. *Actual Damages:* Should either or both of the Government Parties fail to remedy the breach, the Government Party in breach shall be severally liable to pay Destiny International, or, at Destiny International's option, SN Ltd, compensation for actual damages suffered. Such damages may include, without limitation, direct losses, including lost revenues or increased costs incurred, consequential and indirect losses (including loss of future profits), reputational damage and loss of goodwill, loss of investor confidence or reduced ability to attract or retain investment, costs of remediation, mitigation, or legal and professional expenses reasonably incurred and any other financial, economic, or commercial harm resulting from the breach.

Where an uncured breach cannot be clearly and exclusively attributed to one Government Party, or where any Government Party fails to use reasonable efforts to assist the other in curing such breach, then, unless and until the Government Parties have notified Destiny in writing of an objectively supported allocation of responsibility, each Government Party shall be jointly and severally liable for the full damages, and Destiny may recover the whole or any part thereof from either or both at its discretion.

6.5. *Liquidated Damages:* In the event of termination under Clause 8.4, where the primary cause lies within the sphere of responsibility of one or both Government Parties, the Government Party primarily responsible shall be liable to pay Destiny International, or, at Destiny International's discretion, SN Ltd, liquidated damages equal to twice the total capital expenditure plus all land acquisition costs incurred by Destiny, all as of the date the written notice is filed under Clause 8.7, such amounts to be determined in accordance with International Financial Reporting Standards.

The Parties confirm that such liquidated damages are reasonable in the light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss, to protect Destiny International's legitimate interest in the performance of the Government Parties' obligations under this Agreement. The Government Parties shall pay the liquidated damages on demand of Destiny International.

Where the primarily responsible Government Party cannot be clearly determined, then, unless and until the Government Parties have notified Destiny in writing of the responsible Government Party, each Government Party shall be jointly and severally liable for the full damages, and Destiny may recover the whole or any part thereof from either or both at its discretion.

In lieu of claiming liquidated damages under this Clause 6.5, Destiny International may, at its sole discretion, elect to claim actual damages in accordance with Clause 6.4.

6.6. *Sovereign Guarantee:* The Government Parties hereby provide a Sovereign Guarantee to Destiny International as set out in Annex 8 of this Agreement. The Government Parties expressly waive any right to require Destiny International to pursue or exhaust any other remedy before enforcing this Guarantee.

6.7. *Equitable Relief:* In addition to any rights to claim monetary damages, Destiny International shall be entitled to seek equitable relief, including but not limited to injunctions, specific performance, replevin, or declaratory relief, where monetary compensation alone would be inadequate to remedy the breach or to prevent irreparable harm. Such equitable remedies may be pursued in place of or alongside any claim for financial damages, and nothing in this Agreement shall be construed as limiting Destiny International's right to pursue such relief.

6.8. *Other Remedies:* The rights and remedies set out in this Clause 6 are in addition to, and shall not limit, restrict, or prejudice any other remedies available to Destiny International under applicable law.

7. Government Remedies

7.1. Destiny expressly undertakes, affirms, and agrees that it shall diligently and in good faith pursue, achieve, and comply with each and every one of the timelines, deadlines, and milestones set out, enumerated, and defined in Annex 6 to this Agreement.

7.2. In the event, circumstance, or situation where Destiny fails, neglects, or otherwise does not achieve or deliver the agreed timelines and milestones established in Annex 6, whether in whole or in part, such failure shall constitute a breach of this Agreement. In such case, Destiny shall be liable to pay damages to the NIA based on the mechanism and quantum described in Annex 6. For the avoidance of doubt, the Parties confirm and agree that the damages described in Annex 6 are genuine pre-estimates of loss, are proportionate and reasonable in light of the likely or actual harm that may result from delay or non-compliance, and are not to be construed as penalties.

8. Term and Termination

8.1. This Agreement shall become effective on the date it is signed by the last Party (the "Effective Date") and shall remain in force unless terminated in accordance with this Clause.

8.2. No Party may terminate this Agreement except in the event of a persistent and fundamental breach of one or more of the following provisions set out in Clauses 8.3 and 8.4, respectively, resulting in an irretrievable breakdown of trust between Destiny and one or both Government Parties, rendering continued performance impossible or commercially impracticable.

8.3. Only the breaches expressly enumerated below shall entitle the Government Parties to terminate this Agreement, provided that any such termination is effected in full compliance with all the conditions and procedural requirements set forth in this Clause 8:

8.3.1. if the arbitral tribunal referred to in Clause 9 of Annex 6 determines that a breach occurred due to Destiny's failure to exercise reasonable efforts to comply with its obligations under Annex 6; or

8.3.2. Destiny fails to pay monies owed to the Government Parties under this Agreement.

8.4. Only the breaches expressly enumerated below shall entitle Destiny to terminate this Agreement, provided that any such termination is effected in full compliance with all the conditions and procedural requirements set forth in this Clause 8:

8.4.1. the Authorisation Act, or the Destiny Ratification Act or Destiny Endorsement Ordinance is revoked or materially altered;

8.4.2. the Authorisation Act, or the Destiny Ratification Act or the Destiny Endorsement Ordinance, respectively, is declared, in whole or in part, unconstitutional;

8.4.3. an Enactment is passed that contravenes the spirit and intent of this Agreement, or the material interests of Destiny or the Zone; or

8.4.4. the Government Parties fail to observe, respect, or uphold:

8.4.4.1. the Principles of the Zone as set forth in Clause 2 or the Specific Provisions set forth in Clause 3;

8.4.4.2. the delineation and designation of the Area as set out in Annex 1; or

8.4.4.3. the commitments under Clauses 5.2, 5.3, 6.1, or 9.8.

8.5. No Party shall be entitled to invoke termination of this Agreement if the material and primary cause of the breakdown giving rise to such termination is attributable to its own conduct, including acts, omissions, or breaches.

8.6. The SKN Government shall not take any step under this Clause 8 until it has received the written approval of such step by the NIA, and for a Destiny Party to take any step under this Clause, it needs to demonstrate the written approval of such step by the other Destiny Party.

8.7. Where a Party intends to terminate the Agreement under this Clause, it shall first serve written notice to the other Parties, triggering a cooling-off period (the "Cool-Off Period") of no less than 180 (one hundred and eighty) calendar days, during which the Parties shall use all reasonable efforts to negotiate a mutually acceptable solution to avoid termination. At any point during the Cool-Off Period, any Party may, for the remaining Cool-Off Period or for as long as the Parties agree, refer the matter to mediation pursuant to Clause 9.2.2.

8.8. If, at the end of the Cool-Off Period or a mediation period agreed by the Parties, the intention to terminate persists, the matter shall be referred to arbitration under Clause 9.2.3. The arbitral tribunal shall determine whether the requirements of Clauses 8.2 to 8.7 have been satisfied and, if so, shall establish the termination process and arrangements. The arbitral tribunal may, if it considers it appropriate, give consideration to the interests of the Property Owners and the trust placed in the Zone and its legal and contractual framework.

8.9. Any determination by the arbitral tribunal concerning termination shall be without prejudice to any Party's right to claim damages or pursue other legal remedies. Termination pursuant to this Clause shall not affect any rights, obligations, or liabilities accrued prior to the date of the termination becoming effective.

8.10. In the event of a termination pursuant to Clause 8.3, Destiny's liability shall be capped at an aggregate amount not exceeding USD 75,000,000 (seventy-five million United States Dollars) which shall be secured by a lien over any and all

lands owned by Destiny from time to time, which liens will allow the NIA to exercise a right of forfeiture over such lands up to the value of the monies due to the NIA pursuant to this Agreement.

9. General Provisions

9.1. *Governing Law:* The governing law of the Agreement shall be the substantive law of England and Wales.

9.2. Dispute Resolution:

9.2.1. In the event of a dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, performance, or termination, or in relation to the investment made under it, the Parties hereby consent to submit such dispute to the London Court of International Arbitration ("LCIA"). This consent is irrevocable.

9.2.2. The Parties shall first seek settlement of such dispute by mediation in accordance with the LCIA Mediation Rules ("LCIA Mediation Rules"), which are deemed to be incorporated by reference into this Clause.

9.2.3. If the dispute is not settled by mediation within 90 (ninety) days of the commencement of the mediation, or such further period as the Parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules ("LCIA Arbitration Rules"), which Rules are deemed to be incorporated by reference into this Clause.

9.2.4. The language to be used in the mediation and in the arbitration shall be English.

9.2.5. In any arbitration commenced pursuant to this Clause, the number of arbitrators shall be three, with one appointed by the relevant Government Party, one by Destiny International, and the third – who shall serve as the Chair – by the LCIA Court in accordance with the LCIA Arbitration Rules.

9.2.6. The seat, or legal place, of mediation shall be determined in accordance with the LCIA Mediation Rules, with mediation meetings to be held in the Federation of Saint Christopher and Nevis, unless the Parties agree otherwise. Similarly, the place of arbitration shall be determined in accordance with the LCIA Arbitration Rules, with hearings to take place in London, unless otherwise agreed by the Parties.

9.2.7. As an alternative to Clause 9.2.1, and at the sole discretion of any Party pursuing a claim under or in connection with this Agreement, the Government Parties and the Destiny Parties hereby irrevocably consent to submit any dispute arising out of or relating to this Agreement to the

International Centre for Settlement of Investment Disputes (the "Centre") for resolution by way of mediation or conciliation, in accordance with the Centre's applicable rules. If the dispute remains unresolved within thirty (30) days following the communication of the final report of the Conciliation Commission to the Parties, the dispute shall be finally settled by arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention"), to which the Parties expressly consent pursuant to Article 25 thereof.

9.2.8. Notwithstanding any provision of this Agreement referring disputes to mediation or arbitration, any Party shall be entitled, at any time and irrespective of the commencement or contemplation of any mediation or arbitration proceedings, to apply to the courts of England and Wales for any remedy or relief which an arbitral tribunal is not empowered to grant, including, without limitation, interim, conservatory, or injunctive relief. The courts of England and Wales shall have exclusive jurisdiction for the purpose of granting such relief.

9.2.9. Any such application pursuant to Clause 9.2.8 shall not be deemed incompatible with or a waiver of the agreement to mediate and arbitrate, nor shall it affect the powers of the arbitral tribunal with respect to the merits of the dispute.

9.3. *Force Majeure:* No Party shall be liable for any failure or delay in the performance of its obligations under this Agreement (other than any payment obligations) to the extent such failure or delay is caused by or results from events, circumstances, or causes beyond its reasonable control, including but not limited to acts of God, flood, drought, earthquake, storm, hurricane, fire, epidemic or pandemic, war, armed conflict, terrorist attack, civil commotion, industrial dispute, strikes, embargoes, shortages of supplies or utilities, or the failure of third-party service providers or suppliers due to any such event (each a "Force Majeure Event").

The affected Party shall, as soon as reasonably practicable, notify the other Parties in writing of the Force Majeure Event and shall use reasonable efforts to mitigate the effects of the Force Majeure Event. During the continuance of such Force Majeure Event, the obligations of the affected Party under this Agreement shall be suspended for the duration of the delay caused by such event.

Notwithstanding any other provision of this Agreement, no Party shall be liable to any other Party for any losses, damages, or penalties arising from such delay or failure in performance due to a Force Majeure Event, provided that this Clause shall not operate to excuse a Party from any liability which arose prior to the occurrence of the Force Majeure Event or from failure to take reasonable steps to avoid or mitigate the effects thereof.

9.4. *Interpretation:* The rules of interpretation as set out in Annex 9 shall apply to this Agreement, except for Annex 3.

9.5. *Delegation and Assignment:* Destiny shall not, without giving prior written notice of not less than 90 days, novate, assign, or otherwise transfer parts or all its rights and obligations under this Agreement to any third party or parties, irrespective of the domicile of such party/parties.

9.6. *Transition:*

9.6.1. Any dispute, other than such between Parties, that would ordinarily fall under the jurisdiction of the Zone after the Activation Date, but was commenced in court prior to that date, shall remain subject to the substantive and procedural laws in effect at the time it was commenced. For disputes between Parties, the provisions of Clause 9.2 shall apply.

9.6.2. All other matters (i) pertaining to the Zone or arising in the Area, and (ii) pending as of the Activation Date, including those of an administrative nature, shall, as of the Activation Date, fall under the substantive and procedural jurisdiction of the Zone.

9.6.3. Any individual permits, restrictions, or similar decisions issued by an authority of the Federation of Saint Christopher and Nevis or the Island of Nevis before the Activation Date, which would normally fall under the Zone's jurisdiction after that date, shall cease to apply as of the Activation Date, unless the law on which the decision was based continues to be applicable under this Agreement.

9.7. *Sovereign Immunity Waiver:* The Government Parties acknowledge and agree that this Agreement constitutes a commercial investment agreement, and that accordingly, any Government Party shall be estopped from asserting, in any forum, that this Agreement is not of commercial nature. Each Government Party irrevocably waives any and all defences based on sovereign immunity, act of state, or similar doctrines, in relation to any claim, dispute, or enforcement proceeding arising from or in connection with any breaches of this Agreement.

9.8. *Exclusivity:* The Government Parties commit that for a period of ten (10) years from the Effective Date, save by mutual agreement of the Parties, no other person or entity shall be granted the right (directly or indirectly) to establish or operate a Special Sustainability Zone that makes use of the special provisions in Sections 6(2)(j) and (k) of the Authorisation Act, or any other zone, territory, or designated area benefiting from substantially equivalent legislative, regulatory, or administrative autonomy, irrespective of its legal designation or the statutory or contractual framework under which such autonomy is granted, within the territory of the Federation of Saint Christopher and Nevis. This exclusivity commitment shall be subject to Destiny meeting its obligations and commitments under this Agreement.

9.9. *Entire Agreement:* This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior written or oral communications between the Parties. Any future modification shall be done in writing.

9.10. Severability:

9.10.1. If any provision of this Agreement is held to be void or unenforceable, the remainder shall remain in full force and effect. The affected provision shall be deemed replaced by a valid and enforceable provision that most closely reflects the original intent.

9.10.2. If a relevant omission is identified, the validity of the remainder of the Agreement shall not be affected. Where the omission cannot be resolved by written consensus of the Parties without undue delay, a provision shall be deemed incorporated that best reflects the purpose and intent of the Agreement as a whole.

9.11. *No Partnership:* Nothing in this Agreement is intended to create a partnership, joint venture, or agency relationship between the Parties.

9.12. *Costs:* Each Party shall be responsible for its own efforts and the costs incurred, unless explicitly agreed otherwise.

9.13. *Due Authorisation:* Each Party represents, warrants, and covenants, that the person or persons signing upon its behalf has or have been duly authorised and that such signing will create valid and binding obligations of such Party in accordance with the Agreement's terms.

9.14. *Further Assurances:* Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

9.15. *Notices:* The Parties shall give each other notice pursuant to the provisions in Annex 10 to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorised signatories and have duly delivered this Agreement.

The Government of Saint Christopher and Nevis

By: _____

Name: Dr. Terrance M. Drew

Title: Prime Minister

Nevis Island Administration

By: _____

Name: Mark A. G. Brantley

Title: Premier

Destiny International Limited

By: _____

Name: _____

Title: _____

South Nevis Limited

By: _____

Name: _____

Title: _____

Annex 1: Area of Destiny Special Sustainability Zone

Annex 1(a): Land Owned or with Agreement to Purchase

On or towards the West by the remaining lands of Bush Hill Estate 448.35 feet; On or towards the South by the Public Road 435.35 feet, 77.99 feet, 443.60 feet, 101.72 feet, 182.39 feet, 245.02 feet, 180.54 feet, 178.81 feet, 579.72 feet, 120.66 feet, 191.21 feet, 52.39 feet, 49.25 feet, 30.16 feet; On or towards the East partly by Lot B–9 and Lot B–8 and a 30' Road 243.77 feet, 30.10 feet and 243.66 feet; On or towards the North by a Ravine 161.07 feet, 74.18 feet, 116.45 feet, 49.98 feet, 145.98 feet, 280.98 feet, 126.67 feet, 88.78 feet, 114.74 feet, 152.21 feet, 103.74 feet, 89.97 feet, 134.90 feet, 170.02 feet, 117.74 feet, 105.72 feet, 262.49 feet, 103.63 feet, 60.55 feet, 55.86 feet, 95.08 feet and 82.91 feet; Containing by admeasurement 30.7074 acres.

Proof of Ownership: Bk 56 Fol 269

Acres: 30.7074

Plot D: On or towards the West by the remaining lands of Bush Hill Estate 212.00 feet; On or towards the South by a Ravine 90.65 feet, 100.06 feet, 101.17 feet, 81.15 feet, 257.78 feet, 106.82 feet, 115.04 feet, 198.18 feet, 159.69 feet, 65.39 feet, 126.18 feet, 98.16 feet, 76.87 feet, 126.92 feet, 297.23 feet, 122.60 feet, 54.49 feet, 194.40 feet, 182.48 feet, 150.81 feet, 195.19 feet, 90.77 feet, 47.05 feet; On or towards the East, partly by a 30' Road and Lot B–20, 306.99 feet, 44.44 feet, 30.00 feet, 204.32 feet; On or towards the North by Richmond Lodge Estate (Joseph Williams and Augie Williams) 1374.48 feet, 108.90 feet, 327.50 feet, 211.20 feet, 227.08 feet, 121.10 feet, 196.78 feet, 104.03 feet, 143.08 feet, 71.87 feet, 73.44 feet, 40.30 feet; Containing by admeasurement 31.3652 acres (less all that land described below under Bk 59 Fol 290).

Proof of Ownership: Bk 56 Fol 269

Acres: 28.8652

ALL THAT lot piece or parcel of land (Lot B – 22) situate at Bush Hill Estate in the parish of St. John in the Island of Nevis bounded and measuring as follows, that is to say:–On or towards the North-West by lands of Aggie Williams, 535.52 feet; On or towards the North-East by lands of Charmaine S. Hanley (Lot B – 21), 204.32 feet; On or towards the South-East by a 30 Foot Road, 535.52 feet; and On or towards the South-West by lands of Bush Hill Holdings Company Limited, 204.32 feet; and containing by admeasurement 108903.1821 square feet (or 2.50 Acres).-

Proof of Ownership: Bk 59 Fol 290

Acres: 2.5

Annex 1(b): Expansion Area

1. With respect to real property located in the area shown overleaf (the “Expansion Area”), the following shall apply:

    1.1. The NIA shall not enter into or conclude any other development agreement within the meaning of the Authorisation Act that relates to, or includes, any real property situated within the Expansion Area.

    1.2. Any time after Destiny acquires or leases real property within the Expansion Area or concludes an agreement to purchase or lease real property within the Expansion Area (“Additional Real Property”), it shall notify the Premier of the Additional Real Property and provide evidence of acquisition or lease or agreement to purchase.

    1.3. When Destiny wishes the Additional Real Property to become part of the Area of the Destiny Special Sustainability Zone it shall notify the Premier thereof (the “Incorporation Notice”). The Additional Real Property described in an Incorporation Notice shall become part of the Area of the Destiny Special Sustainability Zone 30 calendar days after the date the Incorporation Notice is provided to the Premier, and the Premier shall publish an Order in the Gazette within that period.

    1.4. In any notification pursuant to Clauses 1.2 and 1.3 above, Destiny shall delineate the Additional Real Property by way of a legally sufficient description.

2. With respect to the seabed leased to SN Ltd by the Crown under the Seabed Lease Agreement, the following shall apply:

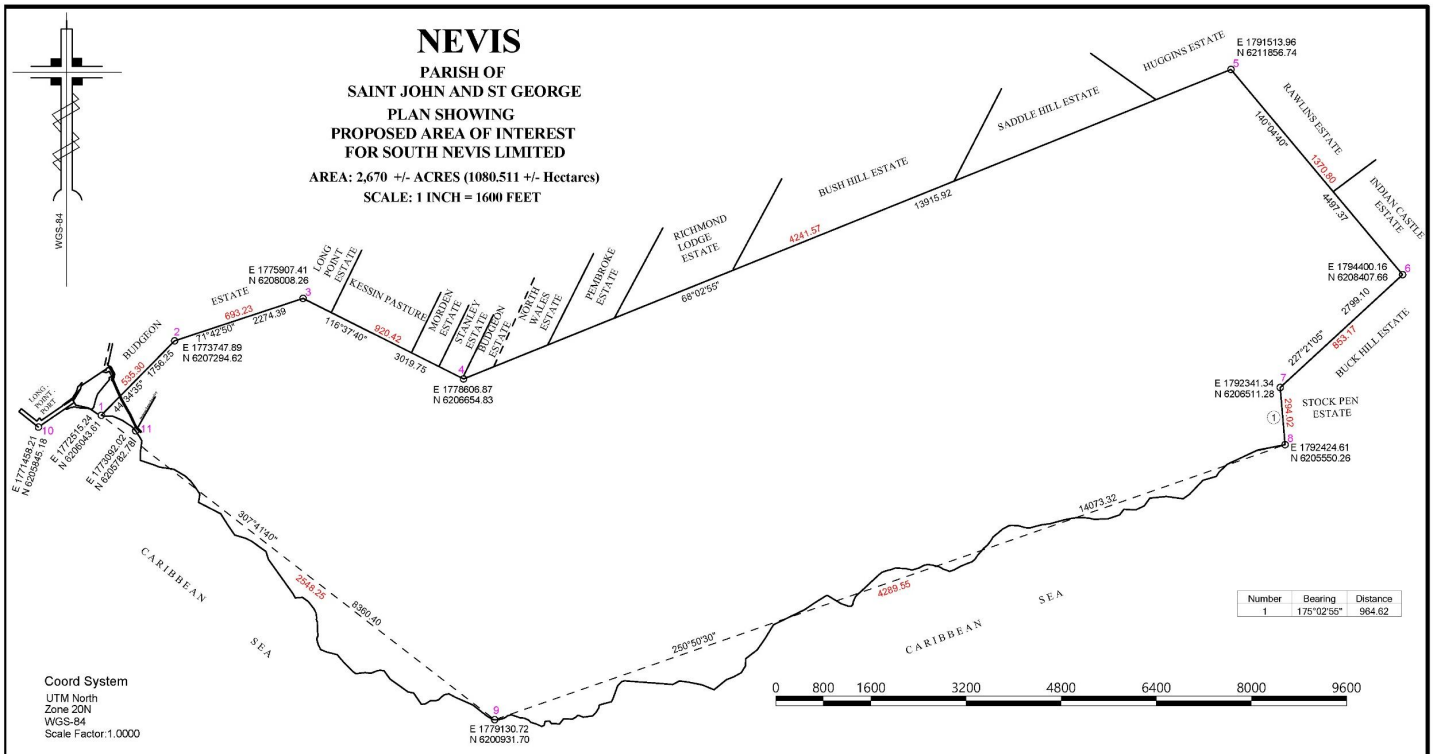
    2.1. Any modification of the size of seabed leased shall automatically lead to an adjustment of the Area, without the need for any further consent from any Party.

    2.2. In the event that any reclaimed land is sold by the Lessee, as defined in the Seabed Lease Agreement, to a third party, such land shall, notwithstanding its sale and the resulting cessation of its inclusion in the Seabed Lease Agreement, be deemed, from the date of transfer of title to the purchaser, to continue forming part of the Area.

NEVIS

PARISH OF
SAINT JOHN AND ST GEORGE
PLAN SHOWING
PROPOSED AREA OF INTEREST
FOR SOUTH NEVIS LIMITED

AREA: 2,670 +/- ACRES (1080.511 +/- Hectares)
SCALE: 1 INCH = 1600 FEET



Number	Bearing	Distance
1	175°02'55"	964.62

Coord System
UTM North
Zone 20N
WGS-84
Scale Factor:1.0000

Notes
The purpose of this plan is to outline an approximated Area of Interest and is not to be used for Title Registration.
The accuracy of this plan is subject to a field survey.
No boundary marks were found or placed.
Imperial distances are labeled in black.
Metric distances are labeled in red.

PROPERTY DESCRIPTION

Beginning at Point No. 1;
Referenced to Point No. 10 with a bearing of 259°22'05" a distance of 1075.50 feet; Referenced to Point No. 11 with a bearing of 114°20'05" a distance of 633.02 feet; thence on a bearing of 44°34'35" a distance of 1756.25 feet in a north easterly direction to Point No. 2 and bounded by lands of Budgeon Estate; thence on a bearing of 71°42'50" a distance of 2274.39 feet in a easterly direction to Point No. 3 and bounded by lands of Budgeon Estate; thence on a bearing of 116°37'40" a distance of 3019.75 feet in a south easterly direction to Point No. 4 and bounded by lands of Long Point Estate, Kessin Pasture, Morden Estate and Stanley Estate; thence on a bearing of 68°02'55" a distance of 13915.92 feet in a easterly direction to Point No. 5 and bounded by lands of Budgeon Estate, North Wales Estate, Pembroke Estate, Richmond Lodge Estate, Bush Hill Estate, Saddle Hill Estate and Huggins Estate; thence on a bearing of 140°04'40" a distance of 4497.37 feet in a south easterly direction to Point No. 6 and bounded by lands of Rawlins Estate and Indian Castle Estate; thence on a bearing of 227°21'05" a distance of 2799.10 feet in a south westerly direction to Point No. 7 and bounded by Buck Hill Estate; thence on a bearing of 175°02'55" a distance of 964.62 feet in a southerly direction to Point No. 8 and bounded by lands of Stock Pen Estate; thence on a bearing of 250°50'30" a distance of 14073.32 feet in a westerly direction following the natural curvature of the cliffs and the mean high-water mark of the Caribbean Sea; thence on a bearing of 307°41'40" a distance of 8360.40 feet in a north westerly following the natural curvature of the cliffs and the mean high-water mark of the Caribbean Sea to Point No. 1, the point of beginning, All as shown on the said plan drawn by Simeon Hill, Licensed Land Surveyor and containing approximately 2,670 Acres or approximately 1080.511 Hectares, subject to a field survey.

Job No.	Dwg No.	Hill's Survey & Mapping
73-2025	7325	P.O. BOX 927, Charlestown, Nevis West Indies Tel: (869) 469-7376 Fax: (869) 469-7176

Simeon Hill
Licensed Land Surveyor
Dated: June 23, 2025.

Annex 2: Agreed Form of the Seabed Lease Agreement

SEABED LEASE AGREEMENT

THIS AGREEMENT (the "Lease Agreement") is made on [xx] (the "Effective Date")

BETWEEN:

1. **Her Honour Mrs. Hyleeta Liburd, O.B.E., M.H.,** Deputy Governor-General for the Island of Nevis at Government House, Nevis, representing the Crown and acting herein for and on behalf of the Nevis Island Administration ("NIA") (hereinafter referred to as the "**Lessor**", which expression shall include the person or body for the time being administering the Nevis Island Administration); and
2. **South Nevis Limited (SN Ltd),** a company duly incorporated under the Companies Ordinance, Cap. 7.06 (N) of the Revised Laws of Saint Christopher and Nevis (Nevis Ordinances), Company No. 18 of 2024, with its registered office at Central Government Road, Charlestown, PO Box 175, Nevis (hereinafter referred to as the **"Lessee"**, which expression shall, where the context so admits, include its successors and assigns).

The Lessor and the Lessee are hereinafter individually referred to as a "Party" and jointly as the "Parties".

Whereas:

A. The Lessor is the owner in fee simple by right of the Crown of that portion of the seabed more particularly described in Schedule 1 hereto (the "Leased Area").

B. The Lessor has agreed to demise the Leased Area to the Lessee upon the terms and conditions set forth herein.

C. The Parties acknowledge that the Leased Area is intended to be used for the following purposes: (i) the construction and operation of a marina and related infrastructure; and (ii) the protection and regeneration of the marine environment, including reefs and fish stocks. The Parties agree that these purposes are fundamental to this Lease and shall govern the interpretation and performance of all obligations herein.

Therefore, the Parties agree:

1. Term

1.1. This Lease shall be for a term of ninety-nine (99) years (the "Term"), commencing on the Activation Day (as defined in Clause 1.2).

1.2. "Activation Day" shall mean 05 May 2027, or the Activation Date under the Destiny Special Sustainability Zone Development Agreement, whichever comes later.

1.3. The Lessee shall have a renewable option for further terms of ninety-nine (99) years on a revolving basis (the "Renewable Option"), exercisable in accordance with Clause 1.4, provided that all material obligations of the Lessee under this Lease have been duly performed.

1.4. The Lease shall automatically renew unless the Lessee notifies the Lessor in writing at any time during the final thirty-six (36) months of the Term that it does not wish to exercise the Renewable Option.

1.5. The Term shall include any holding over, extension, or continuance thereof, whether by statute or common law, where the context so admits.

2. Leased Area and Rent

2.1. The Leased Area comprises the area of seabed, as depicted in Schedule 1 to this Seabed Lease Agreement, including, for the avoidance of doubt, the water column and ocean surface above that area of seabed.

2.2. The rent for the Leased Area for the Term shall be an amount equal to XCD 200.00 (two hundred) for each berth provided for in the Destiny Master Plan as at the date of this Lease and XCD 200.00 (two hundred) for any additional berths which are developed during the Term.

2.3. The rent for the Leased Area shall remain unchanged in the event of the exercise of the Renewable Option.

3. Reservations and Exceptions

This Lease is at all times subject to the right of the Lessor and its authorised agents, upon not less than fourteen (14) days' prior written notice, to enter upon the Leased Area for the purpose of:

3.1. inspecting its state and condition; and

3.2. inspecting or ascertaining its boundaries and erecting or maintaining any boundary markers.

4. Land Reclamation within the Leased Area

4.1. Subject to all applicable laws and approvals, the Lessee may undertake land reclamation activities within the Leased Area.

4.2. The Lessor shall sell any such land to the Lessee at the price of XCD 1.00 (one) per square foot.

4.3. The aggregate area of land that may be reclaimed shall not exceed 135 hectares (corresponding to approximately 333.6 acres).

4.4. The Lessee shall not undertake any land reclamation in excess of the limit set out in Clause 4.3 without prior written consent of the Lessor.

4.5. Upon the Lessee indicating the need for such additional reclamation, the Parties shall consult and negotiate in good faith, with a view to agreeing the applicable commercial terms. Clause 4.2 shall not apply to such additional reclaimed land.

5. Lessor's Covenants

The Lessor covenants with the Lessee that it shall:

5.1. not unreasonably prevent the Lessee from engaging in land reclamation activities, subject to Clause 4; and

5.2. not unreasonably withhold its consent to the sale of land created through such reclamation to the Lessee.

6. Lessee's Covenants

The Lessee covenants with the Lessor that it shall:

6.1. comply with and observe the laws of the Federation of Saint Christopher and Nevis and any lawful directions made thereunder, so far as they apply to the use, occupation, and development of the Leased Area;

6.2. take all necessary steps to prevent and not permit any encroachment upon the Leased Area, and promptly notify the Lessor of any such encroachment or threat thereof;

6.3. at its own cost and risk, carry out the development of the Leased Area in accordance with the objectives set out in Recital C above; and

6.4. promptly notify the Lessor of any change in its registered office.

7. Yielding Up

7.1. Upon expiration or earlier termination of the Term (including any extension thereof), the Lessee shall peaceably yield up the Leased Area to the Lessor in good condition, subject to fair wear and tear, and shall hand over all structures and improvements thereon (the "Improvements"), unless otherwise directed by the Lessor in accordance with this Clause.

7.1.1. No later than twelve (12) months prior to the expiration of the Term, the Lessor may by written notice direct the Lessee that some or all of the Improvements are to be removed from the Leased Area upon surrender.

7.1.2. In the event of earlier termination of this Lease (other than for resumption by the Crown), the Lessor may direct in writing that some or all of the Improvements be retained, without the need for prior notice.

7.1.3. Where Improvements are retained, the Lessor shall pay to the Lessee the fair market value of such retained Improvements, having regard to their age, condition, and suitability for the business conducted on the Leased Area at the time of termination.

7.1.4. If the Parties are unable to agree on the amount of such compensation within three (3) months of the Lessor's written offer, the matter shall be referred to dispute resolution in accordance with Clause 9.

8. Termination

This Lease shall stand or fall with the Destiny Special Sustainability Zone Development Agreement, such that any termination of that Agreement in accordance with its terms shall automatically and without further act operate to terminate this Lease.

9. Dispute Resolution

The provisions of the Destiny Special Sustainability Zone Development Agreement relating to dispute resolution shall apply, *mutatis mutandis*, to this Lease.

10. Miscellaneous Provisions

10.1. Entire Agreement: This Lease constitutes the entire agreement between the Parties with respect to the Leased Area and supersedes all prior negotiations, understandings, or agreements between them, whether written or oral. No variation

of this Lease shall be valid unless made in writing and executed by duly authorised representatives of both Parties.

10.2. **Force Majeure:** Neither Party shall be liable for any failure or delay in performing its obligations under this Lease (other than payment obligations) where such failure or delay results from any event beyond its reasonable control, including act of God, natural disaster, war, terrorism, pandemic, riot, industrial action, or governmental order ("Force Majeure"). The affected obligations shall be suspended for the duration of the Force Majeure event, provided that the affected Party uses reasonable endeavours to mitigate its effects.

10.3. **Notices:** All notices and other communications under this Lease shall be in writing and shall be deemed duly served if delivered by hand, sent by courier, posted by registered mail, or transmitted by electronic mail to the addresses specified below (or such other address as may be notified in writing):

10.3.1. To the Lessor: Nevis Island Administration, Legal Department, Charlestown, Nevis; prem.office@niagovkn.com.

10.3.2. To the Lessee: South Nevis Limited, Central Government Road, Charlestown, PO Box 175, Nevis; notices@destiny.com.

10.3.3. Notices shall be deemed served (i) if delivered by hand or courier, upon delivery; (ii) if posted, three (3) business days after posting; and (iii) if sent by electronic mail, upon transmission, provided no error message is received.

10.4. **Costs:** Each Party shall bear its own legal and professional costs in relation to the negotiation and execution of this Lease. The Lessee shall, however, be responsible for all filing fees, registration charges, and government duties relating to this Lease.

10.5. **Waiver:** No failure or delay by either Party in exercising any right, power, or remedy under this Lease shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise of it.

10.6. **Severability:** If any provision of this Lease is held to be invalid, illegal, or unenforceable, that provision shall, to the extent possible, be replaced by a valid and enforceable provision reflecting the original intent of the Parties. The remaining provisions shall continue in full force and effect.

10.7. **Governing Law and Jurisdiction:** This Lease shall be governed by and construed in accordance with the laws of the Federation of Saint Christopher and Nevis.

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be executed by their respective duly authorised signatories and have duly delivered this Lease Agreement.

Deputy Governor-General for the Island of Nevis

By: _____

Name: _____

Title: _____

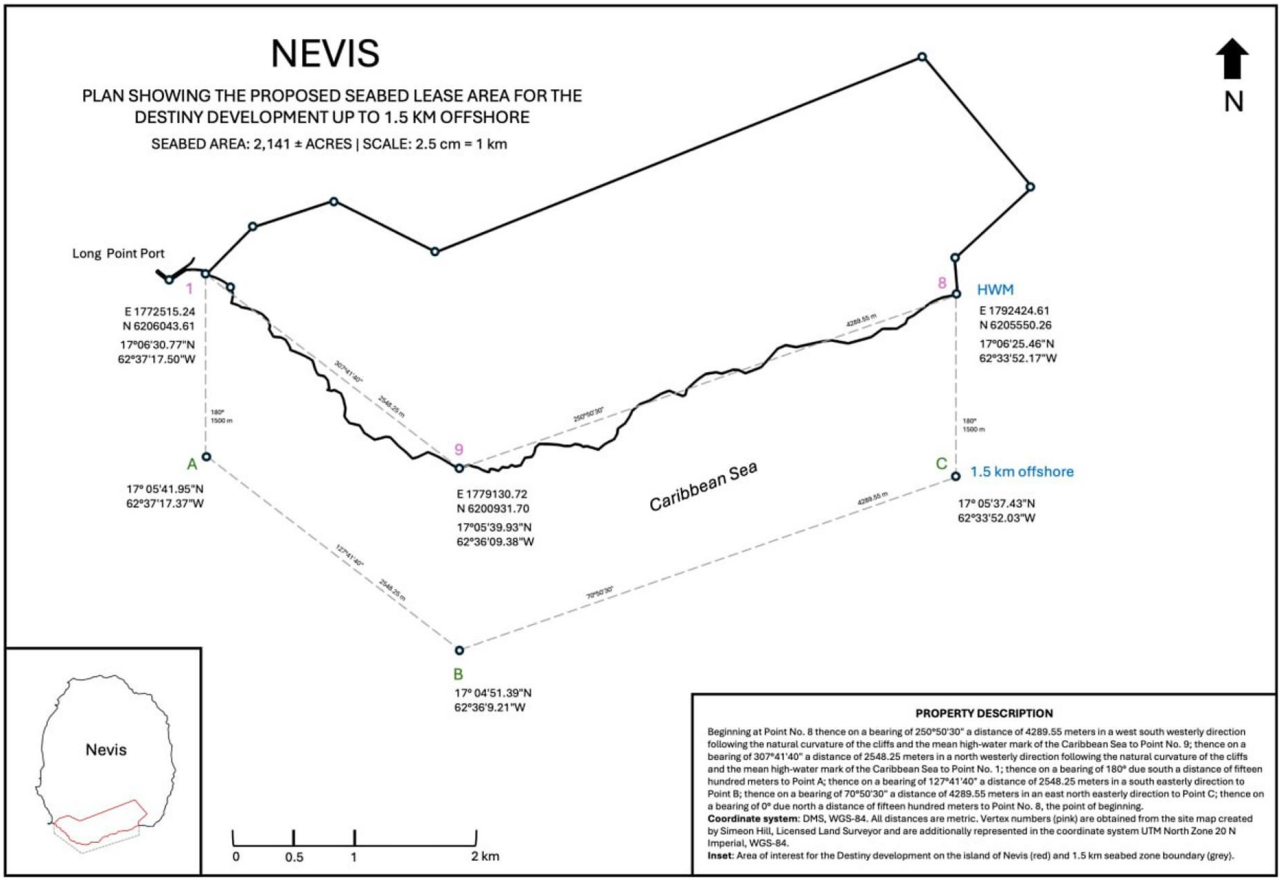
South Nevis Limited

By: _____

Name: _____

Title: _____

Schedule 1 – Description of the Leased Area (overleaf)


NEVIS
PLAN SHOWING THE PROPOSED SEABED LEASE AREA FOR THE DESTINY DEVELOPMENT UP TO 1.5 KM OFFSHORE
SEABED AREA: 2,141 ± ACRES | SCALE: 2.5 cm = 1 km
N
Long Point Port
1
E 1772515.24
N 6206043.61
17°06'30.77"N
62°37'17.50"W
8
HWM
E 1792424.61
N 6205550.26
17°06'25.46"N
62°33'52.17"W
A
17° 05'41.95"N
62°37'17.37"W
9
E 1779130.72
N 6200931.70
17°05'39.93"N
62°36'09.38"W
Caribbean Sea
C
1.5 km offshore
17° 05'37.43"N
62°33'52.03"W
B
17° 04'51.39"N
62°36'9.21"W
Nevis
0
0.5
1
2 km
PROPERTY DESCRIPTION
Beginning at Point No. 8 thence on a bearing of 250°50'30" a distance of 4289.55 meters in a west south westerly direction following the natural curvature of the cliffs and the mean high-water mark of the Caribbean Sea to Point No. 9; thence on a bearing of 307°41'40" a distance of 2548.25 meters in a north westerly direction following the natural curvature of the cliffs and the mean high-water mark of the Caribbean Sea to Point No. 1; thence on a bearing of 180° due south a distance of fifteen hundred meters to Point A; thence on a bearing of 127°41'40" a distance of 2548.25 meters in a south easterly direction to Point B; thence on a bearing of 70°50'30" a distance of 4289.55 meters in an east north easterly direction to Point C; thence on a bearing of 0° due north a distance of fifteen hundred meters to Point No. 8, the point of beginning.
Coordinate system: DMS, WGS-84. All distances are metric. Vertex numbers (pink) are obtained from the site map created by Simeon Hill, Licensed Land Surveyor and are additionally represented in the coordinate system UTM North Zone 20 N Imperial, WGS-84.
Inset: Area of interest for the Destiny development on the island of Nevis (red) and 1.5 km seabed zone boundary (grey).

Annex 3: The Code of Destiny

Chapter 1: Limitations on the Code

Art. 1: Scope of Rights

No person has the right to initiate coercion against another and the rights to life, liberty, and property shall have the greatest possible scope consistent with like rights for all.

Art. 2: Property

No rule in this Code shall restrict the right to peaceably acquire, own, use, or transfer private property.

Art. 3: Privacy

No rule in this Code shall restrict the right to personal, domestic, or financial privacy, the execution of criminal warrants excepted.

Art. 4: Safety

No rule in this Code shall restrict any person’s right to defend self, dependents, and property with proportionate force.

Art. 5: Speech, Conscience, and Expression

No rule in this Code shall restrict any person's freedom of speech, thought, or feeling, whether offensive or otherwise, or their expression or dissemination in press or other media, artistic depiction, scientific viewpoint, or religious practice; nor shall any rule privilege any of the foregoing over another.

Art. 6: Association

No rule in this Code shall restrict freedom of association or dissociation in any form or for any purpose, joint criminal enterprise excepted.

Art. 7: Assembly and Petition

No rule in this Code shall restrict freedom to peaceably assemble or petition for redress of grievances.

Art. 8: Education

No rule in this Code shall restrict teaching or learning by any person, nor compel a method of education.

Art. 9: Work

No rule in this Code shall restrict any person’s freedom to choose to work or not, or the conditions of so doing, nor may any person physically compel another to work.

Art. 10: Family

No rule in this Code shall restrict a parent's discretion in the care and legal representation of a child, except in a case of criminal neglect of the parent's duty for the child's wellbeing and development.

Art. 11: Criminal Proceedings

Every criminal suspect has a right to due process and none shall be:

§ 11.1. Subjected to unreasonable search or seizure;

§ 11.2. Compelled to self-incriminate;

§ 11.3. Denied due process or representation of retained legal counsel;

§ 11.4. Convicted of an offense unless proven in court to be guilty beyond a reasonable doubt;

§ 11.5. Held liable for ex post facto laws;

§ 11.6. Prosecuted twice for the same offense; nor

§ 11.7. Subjected to corporal, cruel and unusual, or deadly punishment.

Art. 12: Medical Autonomy

The protection of individual medical autonomy, informed consent, and freedom of conscience within the Zone shall not be violated.

Art. 13: Equality

No rule in this Code shall create any privilege based on innate or accidental attributes; origin, race, sex, sexuality, language, social position, or cultural background; or physical or mental ability.

Chapter 2: Governance Framework

Art. 1: Governance

Destiny is governed according to the provisions of this Code, within the constitutional framework of Saint Christopher and Nevis.

Art. 2: Area of Application

The Code applies throughout the Area, and both the Code and the Area remain subject to the Constitution of Saint Christopher and Nevis.

Art. 3: Supremacy of Law

The Code of Destiny operates within, and remains subject to, the Constitution of Saint Christopher and Nevis. Within the Code of Destiny, the order of decreasing authority is: the Limitations on the Code, Governance Framework, Area of Application, Amendment Procedure, International Standards, Civil Code, Criminal Code, and Zone Bylaws. All provisions of the Code of Destiny are declared consistent as of Destiny's creation and none may be amended to contradict any superior provision of this Code or the Constitution of Saint Christopher and Nevis.

Art. 4: Code by Mutual Consent

Each party who consents to this Code, whether expressly or by being in the Area, thereby enters into an agreement enforceable under the Code of Destiny with and by all others who do likewise.

Art. 5: Rule-making Procedures

Destiny shall have no standing legislature.

Art. 6: Administrative Procedures

Destiny shall have no standing executive.

Art. 7: Adjudication Procedures

Destiny shall have no standing judiciary.

Art. 8: Restrictions on Remedies

None shall order or enforce any civil remedy except under this Code of Destiny nor any custodial restraint, fine, or expulsion from the Area except under the Criminal Code.

Art. 9: No Special Immunity or Liability

No act done in the name of Destiny shall thereby enjoy special immunity from liability nor render a third party liable.

Art. 10: No Taxes, Debts, or Spending

Destiny shall collect no revenue via taxes, licensing, or other means, nor incur any debt, nor spend any funds.

Chapter 3: Area of Application

Art. 1: Property Included in the Area of Destiny

The reach and effect of the Code of Destiny extends to all the Destiny Zone (Area), which includes all things described below to the fullest extent permitted under the Constitution of Saint Christopher and Nevis:

§ 1.1. Real property in the Area;

§ 1.2. Any waters, seabed, or ocean subsoil leased in the Area;

§ 1.3. Atmospheric space 120 meters above ground level in the Area;

§ 1.4. Electromagnetic spectrum in the Area; and

§ 1.5. Any vehicle or vessel qualified to operate under the Code of Destiny.

Art. 2: Area Bound by the Code of Destiny

Each deed to property in the Area under Article 1 shall include a Prime Servitude, which shall place the property under the Code of Destiny notwithstanding any other servitude or adverse possession to the contrary.

Art. 3: Double Guarantee of Good Title to Area

A party who suffered the loss of real property prior to its inclusion in the Area by means that were illegal under the substantive law then applicable may seek relief in a suit otherwise governed by the Civil Code but in no event shall a court order removal of the property from the Area.

Art. 4: Conduct Agreement

No natural person more than six years old may reside in or visit the Area without providing:

§ 4.1. A promise that the person will obey the Code of Destiny and that all financial liability that the person incurs under the Civil Code's tort rules or the Criminal Code, other than punitive damages or fines, shall be paid ("Conduct Agreement");

§ 4.2. Such a promise to pay shall be secured by a primary lien on at least 1,000 square meters of Surface Real Property; and

§ 4.3. Such a lien may have equal priority with up to 99 other such liens.

Preamble

Together and individually, we agree to the rules set forth in this Code of Destiny.

Chapter 4: Amendment Procedure

Art. 1: Voting Rights

§ 1.1. “Property Owner” means a natural or legal person who owns and publicly records superior title on an Authoritative Registry of Real Property to at least 1 square meter of Surface Real Property in the Area.

§ 1.2. “Surface Real Property” means real estate in the Area, adjoining the atmosphere, above the mean high tide line, excluding improvements.

§ 1.3. At any opportunity to vote under this Chapter, each whole square meter of Surface Real Property owned and recorded on an Authoritative Registry of Real Property shall qualify its Property Owner or Property Owner’s transferee to cast one vote.

§ 1.4. The privilege to vote may be delegated, but:

1.4.1. A delegation must be recorded on an Authoritative Registry of Real Property to qualify its delegate to cast the vote;

1.4.2. A delegation shall have continuing effect only until the delegating Property Owner or a successor in interest similarly records its revocation; and

1.4.3. No promise to delegate or not revoke a delegation may be legally enforced.

§ 1.5. A record of ownership of Surface Real Property on an Authoritative Registry of Real Property qualifies a vote to be cast only if the record includes information ensuring that individuated notice can be given to each qualified voter in a timely, efficient, and reliable manner, well prior to any deadline for voting.

§ 1.6. If not all owners of a jointly owned Surface Real Property agree on how to cast their shared vote, it is not qualified to be cast.

Art. 2: Decision Thresholds

§ 2.1. A proposal to amend the Limitations on the Code, Governance Framework, Area of Application, or Amendment Procedure shall carry only if it receives at least 70% of all votes qualified to be cast.

§ 2.2. A proposal to amend the International Standards, Civil Code, Criminal Code, or Zone Bylaws shall carry only if it receives greater than 50% of all votes qualified to be cast.

§ 2.3. A proposal to amend the Code of Destiny made under the rules of this Article must carry twice, the second time more than two weeks and less than four weeks after the first.

Art. 3: Voting Processes

§ 3.1. To have binding effect, any vote to amend the Code of Destiny must use best efforts to:

3.1.1. Make the full proposal publicly available for a minimum of six continuous weeks up to the end of the voting period;

3.1.2. Reliably count, record, and publicly report on a daily basis all and only those qualified votes cast within a one-week period;

3.1.3. Protect voter anonymity; and

3.1.4. Provide all voters an equal and reasonable opportunity to cast their votes.

Art. 4: Proof and Effect of Amendments

§ 4.1. Any Property Owner may amend the Code of Destiny by:

4.1.1. Publicly recording proof that the proposed amendment does not contradict superior Code of Destiny and has met the voting requirements of the above Articles; and

4.1.2. Posting a bounty payable to any Property Owner who within 90 calendar days of that public recording files a civil suit under this section alleging that the proof fails and who wins that suit. The bounty shall be worth XCD 250,000, adjusted for inflation as of the effective date of this Chapter, for every whole 1% of votes required to approve the amendment.

§ 4.2. A civil suit alleging that proof of a proposed amendment fails shall be tried according to the procedural rules of the Civil Code, except that:

4.2.1. The alleger's sole remedy shall be reasonable legal costs, an order negating the proposed amendment, and the remainder of posted bounty after payment of the legal costs;

4.2.2. The proposer's sole remedy shall be that the proposed amendment remains in force and reasonable legal costs; and

4.2.3. The proceedings shall be public and their results recorded on the Authoritative Registry of the Code of Destiny.

§ 4.3. If a claim about a proposed amendment survives all such challenges made within 90 calendar days of its public recording, it shall be presumed part of the Code of Destiny and given effect as such.

§ 4.4. No amendment shall have retroactive effect.

Art. 5: Authoritative Registries

§ 5.1. Any owner of Surface Real Property may pursuant to this Article approve one or more parties to provide any authoritative registry of records expressly required by the Code of Destiny (Authoritative Registry), including but not limited to Authoritative Registries of the Code of Destiny, property ownership, voting rights, natural or legal persons, security interests, and court officers, filings, judgments, or orders.

§ 5.2. Recordation by an Authoritative Registry pursuant to this article shall:

5.2.1. Provide public notice of any record not sealed, confidential, or secret under the Criminal Code; and

5.2.2. Establish a legal presumption that the record qualified for recordation, rebuttable only by a preponderance of the evidence as found by a court formed and functioning under the Code of Destiny.

§ 5.3. An Authoritative Registry must:

5.3.1. Record information securely, immutably, following best practices in data management, and in a format that facilitates copying and auditing by any party having access to information recorded on the Authoritative Registry;

5.3.2. Reliably record information about the source, effect, and time of each change to the Authoritative Registry;

5.3.3. Allow access to information recorded on the Authoritative Registry unconditioned by payment or legal status; and

5.3.4. Maintain records not in a single copy but instead in multiple coequal and identical copies.

§ 5.4. A party providing an Authoritative Registry under this Article (Authoritative Registrar):

5.4.1. May condition recordation on payment but only at posted rates that do not discriminate on the basis of persons or content;

5.4.2. Shall assume liability for any damage caused by its failure to exercise due diligence in recordation;

5.4.3. Shall cooperate in good faith with any other Authoritative Registrar to ensure satisfaction of the requirements set forth in this Article for Registries and Registrars but shall not thereby assume any liability for another Authoritative Registrar's negligence;

5.4.4. Shall not have criminally abused its authority nor have any director, officer, employee, or other agent who has done so;

5.4.5. Shall give public notice of any opening or closing of operations no less than 30 calendar days prior to that date;

5.4.6. Shall promise to those reporting or relying on its records and to other Authoritative Registrars that it will satisfy the requirements set forth for the Registry in question and for Registrars, and must credibly guarantee that any damage caused by breach of that promise will be compensated; and

5.4.7. Must be approved pursuant to § 5.5.

§ 5.5. Any owner of Surface Real Property may approve an Authoritative Registrar to provide services under this Article by guaranteeing to cover any financial liability other than punitive damages or fines that the Authoritative Registrar incurs under

the Civil Code's tort rules or the Criminal Code, secured with a primary lien on at least 1,000 square meters of Surface Real Property.

Chapter 5: International Standards

Art. 1: Agreements that Destiny Pledges Not to Violate

All subject to the Code of Destiny hereby pledge that they will in particular not violate the prohibitions set forth in these international agreements:

§ 1.1. Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925);

§ 1.2. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956);

§ 1.3. New York Arbitration Convention (1958), and a judgment issued under the Procedural Civil Rules by an "agreement in writing" between the parties shall constitute an "arbitral award";

§ 1.4. Sea Bed Arms Control Treaty (1971);

§ 1.5. Biological Weapons Convention (1972);

§ 1.6. Convention on the International Regulations for Preventing Collisions at Sea (1972);

§ 1.7. Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973);

§ 1.8. Convention on Environmental Modification Techniques (1976);

§ 1.9. United Nations Convention on the Law of the Sea (1982), Parts I through X and Article 217 only;

§ 1.10. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987);

§ 1.11. Chemical Weapons Convention (1993);

§ 1.12. Comprehensive Nuclear-Test-Ban Treaty (1998);

§ 1.13. Convention on Certain Conventional Weapons (2001), excluding Protocol V;

§ 1.14. Convention on International Civil Aviation (2006), without derogation to CoD § 6.1.2 through § 6.1.3;

§ 1.15. International Convention for the Suppression of Acts of Nuclear Terrorism (2007);

§ 1.16. Treaty on the Prohibition of Nuclear Weapons (2017);

§ 1.17. International Telecommunication Union Radio Regulations (2020), except insofar as they require a license or certificate to operate a station; and

§ 1.18. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (2023).

Art. 2: Remedy for Breach

Breach of a pledge made under this Chapter shall be enforceable only by a Property Owner's suit against the allegedly breaching defendant, heard under the procedural rules of the Civil Code and remedied only by an award of reasonable legal costs, a negative injunction, or both, but the breach may support a separate action under other provisions of the Code of Destiny or constitute an aggravating factor in the sentencing of a violation of the Criminal Code.

Art. 3: Parity with Foreign Parties

A Property Owner shall not be denied any privilege to use the Area that a foreign party enjoys under this Chapter.

Chapter 6: Civil Code

Art. 1: Substantive Civil Rules

§ 1.1. General Principles

1.1.1. Common Law: The common law as revealed in actual practice, court decisions, and persuasive commentary shall provide the substantive civil law of Destiny except insofar as the Civil Code expressly provides otherwise by rule or exclusion. Courts shall seek the common law first in Destiny sources, and then if necessary from elsewhere, favoring always the contemporary majority rule.

1.1.2. Authority of Civil Law: No conduct gives rise to civil liability unless it is made a source of liability by this Civil Code. Coercion may be used in the investigation, litigation, or remedying of a civil liability only in compliance with the Civil Code. No civil liability shall be immune from legal remedy except as provided in the Civil Code.

§ 1.2. Tort Law

1.2.1. Generally: ALI, Restatement of Torts, Second (1965-79), excluding § 146; changing everything after “only” to “if it enters Atmospheric Space.” in § 159(2); excluding §§ 580A, 580B, 591, 598A, and 656; changing “earth but” to “earth, and includes maritime waters, but” in § 846; and excluding §§ 895 A-D and § 914.

1.2.2. Defective Products: ALI, Restatement of Torts, Third, Product Liability (1998).

1.2.3. Shared Blame: ALI, Restatement of Torts, Third, Apportionment of Liability (2000).

1.2.4. Personal Harm: ALI, Restatement of Torts, Third, Liability for Physical and Emotional Harm (2009-12), plus this § 40(c): “One who voluntarily takes part in the creation of a natural person by natural or artificial reproduction thereby acquires custodial duties with regard to any resulting fertilized ovum, embryo, or fetus.”

§ 1.3. Property Law

1.3.1. Generally: ALI, Restatement of Property (1936-40).

1.3.2. Leases: ALI, Restatement of Property, Second, Landlord and Tenant (1977).

1.3.3. Mortgages: ALI, Restatement of Property, Third, Mortgages (1997).

1.3.4. Servitudes: ALI, Restatement of Property, Third, Servitudes (2000).

1.3.5. Gifts: ALI, Restatement of Property, Third, Wills and Other Donative Transfers (1999-2011).

1.3.6. Maritime Land: Real property includes ocean seabed and subsoil below the mean high tide line and any artificial island, installation, or structure

permanently affixed to it, around which a safety zone of up to 500 meters not above another's real property may be claimed.

1.3.7. Navigable Waters: Only waters connected to the sea and capable of carrying commercial vessels shall classify as navigable.

1.3.8. Atmospheric Space: Real property not EEZ or continental shelf includes the exclusive right to occupy the atmosphere above it for up to 120 meters from any land, water, or improvement, beyond which any air or space vessel permitted under international law may innocently pass.

1.3.9. Electromagnetic Spectrum: Real property includes the right to use electromagnetic spectrum on it without interference amounting to private nuisance.

1.3.10. Race-Based Servitudes: Any servitude conditioned on race shall be invalid because it violates public policy.

1.3.11. Jointly Owned Property Servitude: A servitude that incorporates a trust created to govern all Surface Real Property within thirty-five (35) meters of the boundary of the Area, together with other real property held for the benefit of all Property Owners (Jointly Owned Property), may be terminated or modified only by the terms of that trust.

§ 1.4. Contract Law: ALI, Restatement of Contracts, Second (1981), excepting §§ 110-150 (referencing statute of frauds).

§ 1.5. Additional Restatements of the Common Law

1.5.1. Conflict of Laws: ALI, Restatement of Conflict of Laws, Second (1971).

1.5.2. Unfair Competition: ALI, Restatement of Unfair Competition, Third (1995).

1.5.3. Suretyship and Guaranty: ALI, Restatement of Suretyship and Guaranty, Third (1996).

1.5.4. Agency: ALI, Restatement of the Law of Agency, Third (2006).

1.5.5. Trusts: ALI, Restatement of Trusts, Second (1959).

1.5.5.1. A trust agreement created to govern all Surface Real Property within thirty-five (35) meters of the boundary of the Area may be terminated or modified only by its own terms.

1.5.5.2. Real property held by a trust created to govern all Surface Real Property within thirty-five (35) meters of the boundary of the Area shall be exempt from equitable relief or seizure in satisfaction of liability if the trust agreement so provides.

1.5.6. Restitution and Unjust Enrichment: ALI, Restatement of Restitution and Unjust Enrichment, Third (2011).

1.5.7. Employment: ALI, Restatement of Employment Law (2015), supplemented and, where inconsistent, superseded as follows:

1.5.7.1. Scope and Minimum Rights: An employee is a person who personally performs work substantially under another's direction and control, regardless of contractual label. Protections concerning earned pay, discrimination, coercion, children, retaliation, and serious workplace safety may not be waived; other provisions may be varied by informed written agreement.

1.5.7.2. Terms and Probation: Employment expected to exceed four months shall have written terms stating duties, hours, pay, payment intervals, duration, probation, and leave. Probation shall not exceed three months.

1.5.7.3. Working Time: Standard working time shall not exceed eight hours per day and forty hours per week, with twenty-four consecutive hours' rest in every seven days and a reasonable meal interval. No employer shall require hours creating a material risk to health or safety.

1.5.7.4. Pay: Earned compensation shall be paid directly, regularly, and with an itemized statement, and the employer shall have no control over how it is spent.

1.5.7.5. Leave: After probation, an employee shall receive at least fourteen paid vacation days annually, excluding weekly rest days, with accrued vacation pay due upon termination. After four months' service, an employee medically unfit for work shall receive up to twelve paid sick days annually.

1.5.7.6. Family Leave: After twelve months' service, an employee shall receive at least fourteen weeks' maternity leave, including six weeks after birth, and any medically necessary additional leave. No employee may be dismissed because of pregnancy, such leave, certified temporary illness, or legitimate personal or family emergency.

1.5.7.7. Fair Termination: Employment may be terminated according to its agreed terms, but not for a discriminatory, retaliatory, unlawful, or bad-faith purpose. Summary dismissal requires serious misconduct. Before dismissal for remediable misconduct or poor performance, the employee shall ordinarily receive notice and a reasonable opportunity to improve.

1.5.7.8. Notice, Severance, and Continuity: Termination other than for serious misconduct requires one week's notice after six months' service, two weeks after two years, and one month after five years. A business transfer shall preserve accrued

compensation and vested benefits but shall not compel continued employment.

1.5.7.9. Equality and Collective Rights: No employer shall discriminate in recruitment, pay, or employment based on an innate or accidental attribute unrelated to a bona fide occupational requirement, nor due to an employee's peaceful association, representation, or collective advocacy.

1.5.7.10. Children: No person under sixteen shall be employed except in voluntary, nonhazardous, and light work that does not prejudice educational opportunity; no person under eighteen shall perform hazardous or night work.

1.5.7.11. Safety: An employer shall take reasonable mitigation measures proportionate to foreseeable workplace risks, provide necessary equipment, training, and protective gear at no cost, reasonably accommodate pregnancy and nursing, and permit withdrawal from serious and imminent danger without retaliation.

1.5.7.12. Enforcement: Each protection constitutes an implied employment term enforceable by the affected employee for accrued sums, proven loss, and injunctive relief where damages are inadequate. Nonwaivable protections also constitute independent civil duties; less favorable terms are void only to that extent.

§ 1.6. Uniform Commercial Codes

1.6.1. General Provisions: ALI & Uniform Law Commission (ULC), Uniform Commercial Code (UCC), Article 1: General Provisions (2001), plus amendments accommodating Article 12.

1.6.2. Sales of Goods: ALI & ULC, UCC Article 2: Sales (2001), plus amendments accommodating Article 12.

1.6.3. Leases of Goods: ALI & ULC, UCC Article 2A: Leases (2002), plus amendments accommodating Article 12.

1.6.4. Negotiable Instruments: ALI & ULC, UCC Article 3: Negotiable Instruments (2002), plus amendments accommodating Article 12.

1.6.5. Banking: ALI & ULC, UCC Article 4: Bank Deposits and Collections (2002).

1.6.6. Funds Transfers: ALI & ULC, UCC Article 4A: Funds Transfers (2012), plus amendments accommodating Article 12.

1.6.7. Letters of Credit: ALI & ULC, UCC Article 5: Letters of Credit (1995), plus amendments accommodating Article 12.

1.6.8. Documents of Title: ALI & ULC, UCC Article 7: Documents of Title (2003), plus amendments accommodating Article 12.

1.6.9. Investment Securities: ALI & ULC, UCC Article 8: Investment Securities (1994), plus amendments accommodating Article 12.

1.6.10. Secured Transactions: ALI & ULC, UCC Article 9: Secured Transactions (2010), plus amendments accommodating Article 12.

1.6.11. Digital Assets: ALI & ULC, UCC Article 12: Controllable Electronic Records (2022).

§ 1.7. Natural Persons

1.7.1. Adoption: ULC, Uniform Adoption Act (1994).

1.7.2. Wards and Protected Persons: ULC, Uniform Guardianship and Protective Proceedings Act (1997).

1.7.3. Parentage: ULC, Uniform Parentage Act (2017).

1.7.4. Marriage: ULC, Uniform Premarital and Marital Agreements Act (2012).

1.7.5. Probate: ULC, Uniform Probate Code (2019).

1.7.6. Natural Personhood: Whether in the form of a fertilized ovum, embryo, fetus, infant, child, or adult, a human qualifies as a natural person protected by this Code.

§ 1.8. Legal Persons

1.8.1. Nonprofit Corporations: ABA, Model Nonprofit Corporation Act (2008).

1.8.2. Corporations: ABA, Model Business Corporation Act (2016).

1.8.3. Business Organizations: ULC, Uniform Business Organizations Code (UBOC), Article 1: The Hub (2013).

1.8.4. Conversions and Mergers: ULC, UBOC, Article 2: Model Entity Transaction Act (2013).

1.8.5. Partnerships: ULC, UBOC, Article 3: Uniform Partnership Act (2013).

1.8.6. Limited Partnership: ULC, UBOC, Article 4: Uniform Limited Partnership Act (2013).

1.8.7. Limited Liability Companies: ULC, UBOC, Article 5: Uniform Limited Liability Company Act (2013).

1.8.8. Cooperative Associations: ULC, UBOC, Article 6: Uniform Limited Cooperative Association Act (2013).

1.8.9. Unincorporated Nonprofits: ULC, UBOC, Article 7: Uniform Unincorporated Nonprofit Association Act (2011).

1.8.10. Business Trusts: ULC, UBOC, Article 8: Uniform Statutory Trust Entity Act (2013).

1.8.11. Alter Ego Doctrine: A person acting through a legal person may be held liable for acts nominally by the latter if clear and convincing evidence establishes that:

1.8.11.1. The two persons acted with functional unity of interest and control; and

1.8.11.2. Adherence to the fiction of separate persons would promote fraud or gross injustice.

§ 1.9. Substantive Administrative Rules

1.9.1. Electronic Signatures: ULC, Uniform Electronic Transactions Act (1999), except § 3(b).

1.9.2. Electronic Recording: ULC, Uniform Real Property Electronic Recording Act (2005).

1.9.3. Priority of Title to Real Property: Any conveyance of an interest in real property that has not been publicly recorded in the Authoritative Registry of Real Property shall be void as against any subsequent transfer of a conflicting interest for value paid in good faith, publicly recorded earlier.

1.9.4. Adulthood: Adulthood, age of majority, and capacity to contract begin 18 years after a person's birth.

1.9.5. Time Limits: A cause of action subject to the statute of limitations or a claim against adverse possession or prescription expires seven years after its accrual.

1.9.6. Wrongful Death and Survival of Actions:

1.9.6.1. Whenever the death of a natural person, including an unborn child, is caused by another party’s wrongful act or omission, that party shall be liable to the deceased person’s estate and survivors for any damage thereby caused to the deceased or to them, respectively.

1.9.6.2. The deceased person’s estate shall include economic and non-economic losses wrongfully caused by a party to the deceased while still living and to the estate thereafter, which the estate’s representative may bring suit to recover.

1.9.6.3. Survivors’ damages include economic and non-economic losses that the wrongful act caused to them and to the estimated net earnings the deceased would have earned during life but for the wrongful death. Survivors under this section include spouses and heirs as defined in CoD § 6.1.7.5.2-102 & § 6.1.7.5.2-103. Survivors

shall take the same share of lost earnings as there provided for intestate successors unless the deceased has provided otherwise by will.

1.9.6.4. No action for damages resulting from the death of an unborn child may be brought under this section except for an illegal abortion.

1.9.6.5. Separate actions brought for the same wrongful death shall be consolidated on motion of any party.

1.9.7. Enforceability of Foreign Arbitrations: An arbitral award enforceable under the New York Arbitration Convention (1958) shall be enforceable under the Code of Destiny subject to the conditions and limitations of that Convention.

§ 1.10. Failure to Appoint a Neutral: Any Property Owner in breach of the obligation set forth in CoD § 7.3.2.1.9.1 to appoint a qualified Neutral shall be liable under this section to the first Property Owner or Authoritative Criminal Registrar to file suit during that breach for damages:

1.10.1. Equal to the number of whole months of the Property Owner's failure, times that number as a fraction of twelve months, times XCD 2,500 adjusted for inflation as of the effective date of this section; but

1.10.2. Not more than the market value of all Surface Real Property that is not also Jointly Owned Property and that qualifies the Property Owner as such; and

1.10.3. A party recovering such damages shall pay one-half of them, net of reasonable legal costs, to a Property Owners' Trustee for distribution to Property Owners in proportion to the Surface Real Property that each owns.

§ 1.11. Substantive Catchall Rule: Contracting parties may freely choose the law that governs their relationship except with regard to contract formation or remedies, and no case may be decided contrary to common practice, the general tenor of the Code of Destiny, or a decent respect for human dignity.

Art. 2: Procedural Civil Rules

§ 2.1. Procedural Principles: ALI & International Institute for the Unification of Law, Principles of Transnational Civil Procedure (2004), but proceedings may not be consolidated without the consent of all parties.

§ 2.2. Default Procedural Rules

2.2.1. Judges: Each party to a legal action shall choose a judge and those two judges shall choose a third, who shall chair the panel of three judges.

2.2.2. Remedies: Judges must choose one party's proposed remedy by majority vote or dismiss the suit but shall not order any other remedy. If co-parties in a consolidated proceeding cannot agree on what remedy to propose, they shall receive separate remedy proceedings. A party may propose punitive damages only after publicizing the proposal and judges may award such damages only after a reasonable time has passed for the filing of any criminal claim arising out of the same facts.

2.2.3. Costs: A party whose proposed remedy was not chosen shall pay the reasonable legal costs of any counterparty whose remedy was chosen. The plaintiff or petitioner shall pay the reasonable legal costs of the defendant or respondent if the suit is dismissed.

2.2.4. Appeals: Any party to a suit may appeal a judgment issued in it if at least one third of the judges in the issuing panel did not join the decision. The appeal must be made within 30 calendar days of the judgment. Only two appeals may be had. An appellate panel shall justify any decision it makes in a written public opinion. The panel hearing the appeal shall immediately dismiss the case unless a majority of the judges determine on the pleadings that the prior panel based its decision on an error of law or a clearly erroneous finding of fact. The appeal will be decided by the panel that issued the judgment on appeal plus these four additional judges:

2.2.4.1. An appellate judge chosen by the chair of the deciding panel and the next-most recently chosen judge;

2.2.4.2. An appellate judge chosen by the chair of the deciding panel and the second-most recently chosen judge;

2.2.4.3. An appellate judge chosen by the two judges of the deciding panel not chairs; and

2.2.4.4. An appellate judge, who shall chair the appellate panel, chosen by the judges chosen under subsections 1 and 2, above.

2.2.5. Single Judge Trial: After they select the initial three-judge panel, the parties may by mutual agreement empower the chair to act in place of the panel. A decision of that judge shall have the same effect under these Procedural Rules as a unanimous panel decision. Either party may recall the original panel at any time prior to final judgment by the single judge, which panel may reverse or modify any decision of that judge. Either party may within 30 calendar days of a judgment by the single judge appeal it to the original panel.

2.2.6. Replacements: Absent judges shall be replaced according to the same procedures by which they were appointed.

2.2.7. Unilateral Judgments: If a party fails to appoint a judge within ten calendar days of receiving valid notice of a legal action or fails to timely appear, plead, or proceed to trial, a public default judgment may be issued by a judge appointed by the Chief Justice of the Eastern Caribbean Supreme Court. A panel formed with the noticed party's cooperation under CoD § 6.2.2.1 may reform the judgment at any time, subject to the statute of limitations.

2.2.8. Failure of Judges to Choose Another: If two judges responsible for appointing a third fail to do so within ten calendar days, that delay shall constitute breach of the Judicial Promise by the judge or judges found to have administered incompetently, who shall be replaced. The third judge shall be appointed by the Chief Justice of the Eastern Caribbean Supreme Court.

§ 2.3. Judicial Promise

No person may render judicial services under this Civil Code without first making this statement or its equivalent to the parties: “I hereby promise that I have fully disclosed my professional qualifications, criminal record, and any conflict of interest, and will administer and judge your dispute impartially and competently, giving full effect to Chapter 1 of the Code of Destiny, based on my understanding of the relevant law. I foresee and intend that you will rely on this promise and hereby offer to pay double any civil damages that you win for my breach of it, this offer to be held open for the applicable statute of limitations in consideration of the trust that you vest in me.”

§ 2.4. Evidence: NCCUSL, Uniform Rules of Evidence (2005).

§ 2.5. Mutual Agreement to Alternative Procedural Rules: A dispute under this Code may be resolved by procedural rules other than the Default Procedural Rules only by written agreement between the disputing parties but never by procedural rules inconsistent with due process, substantive justice, or the rule of law.

§ 2.6. Tolling of Civil Action During Criminal Prosecution: If a civil action and criminal prosecution arise out of the same operative facts, the civil action shall be tolled immediately upon commencement of the criminal prosecution and until it concludes.

§ 2.7. Judgments: ALI, Restatement of Judgments, Second (1982).

Art. 3: Meta-Rules

§ 3.1. Alternative Provisions: If a rule incorporated from a foreign source offers alternative provisions, the Code of Destiny incorporates the alternative offered first unless otherwise provided.

§ 3.2. Optional Provisions: If rules incorporated from a foreign source offer an optional provision, it is not incorporated into the Code of Destiny unless otherwise provided.

§ 3.3. Adapted Meaning: If a rule refers to an institution or legal status that does not exist under the Code of Destiny, the rule instead refers to the closest functionally equivalent institution or legal status that does or could exist under the Code of Destiny, unless the most similar such institution or legal status is substantially different or has a materially different functional effect from its putative counterpart, in which case the reference has no effect. Specifically, in any rule incorporated from a foreign source:

3.3.1. A state, county, or government corresponds, as context dictates, either to the Property Owners in proportion to the Surface Real Property that each owns or to Destiny;

3.3.2. A legislature corresponds to the Property Owners acting under the Governing Procedures;

3.3.3. A court corresponds to a court formed and functioning under the Code of Destiny and includes courts hearing probate or admiralty cases, as context dictates;

3.3.4. A jury corresponds to the finder of fact in a Destiny court;

3.3.5. A local government or administrative agency corresponds to an entity managing real property bound by joint reciprocal servitude;

3.3.6. An attorney general corresponds to a party bringing suit for the wrong in question;

3.3.7. A peace, police, or public officer corresponds to a Property Owner, delegate, or assign enforcing the Code of Destiny on real property bound by joint reciprocal servitude;

3.3.8. A secretary of state or vital records office corresponds to an Authoritative Registrar;

3.3.9. A state treasurer corresponds to a Property Owners' Trustee;

3.3.10. A state escheat fund corresponds to a corpus that a Property Owners' Trustee shall distribute to Property Owners in proportion to the Surface Real Property that each owns;

3.3.11. The public corresponds to Property Owners and their licensees; and

3.3.12. A specific technology corresponds to any technology that replaces it.

§ 3.4. Incorporation of Referenced Rules: When the Civil Code references rule sets from foreign sources:

3.4.1. The Civil Code shall incorporate only the rules, but commentary or supporting case law may have persuasive effect;

3.4.2. The rules become effective when incorporated into the Civil Code;

3.4.3. Brackets may be deleted if doing so has no substantive effect;

3.4.4. Gendered language shall be read to apply to all sexes equally;

3.4.5. Rules purporting to define crimes or impose criminal penalties shall have no effect; and

3.4.6. Prices left unspecified in the incorporated rules shall be determined by supply and demand in a competitive marketplace.

§ 3.5. Intra-Code Conflicts: If different rules of the Civil Code give conflicting results, the rule listed later in this Chapter prevails, but no such rule can prevail over this one.

Chapter 7: Criminal Code

Art. 1: General Provisions

§ 1.1. Authority of Criminal Law: No conduct constitutes a crime unless it is expressly made an offense by the Laws of Saint Christopher and Nevis, including this Chapter, or is an offense at common law for which those Laws specifically prescribe a penalty. Until the New Penal Code, as defined in Clause 3.1.2 of the Development Agreement, enters into force, any other offense at common law applied under CoD § 7.2.1 also constitutes a crime, punishable by a fine not exceeding XCD 25,000 or imprisonment for a term not exceeding 12 months, or both.

§ 1.2. Criminal Rights: A person coerced under this Criminal Code shall enjoy the protections of Chapter 1 of the Code of Destiny (CoD) no less than any other person, as well as the specific protections of rights recognized by the Criminal Code.

1.2.1. Ex post facto laws: No person shall be held guilty of a crime on account of any act or omission that did not constitute a criminal offense at the time it was committed; nor shall a harsher penalty be imposed than the one applicable at the time the offense was committed; but, if subsequent to the commission of an offense, the law against it is amended to allow a more lenient punishment, the offender shall benefit thereby.

1.2.2. Equal protection: Criminal Courts shall treat every person as equal before the law and entitled to the equal protection thereof. No person shall be discriminated against in the enforcement and adjudication of the Criminal Code on any ground prohibited by CoD § 1.13.

1.2.3. Rights to liberty, property, and privacy:

1.2.3.1. No person shall be subjected to unreasonable search or seizure; to arbitrary or unlawful violation of personal, domestic, or financial privacy rights; or to arbitrary or unlawful arrest or detention.

1.2.3.2. No warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing what is to be searched and seized.

1.2.3.3. Every arrested person shall be informed, at the time of arrest, of the reason for the arrest and of any pending criminal charges against the arrestee.

1.2.3.4. If held in custody, an arrested person shall be brought without undue delay before a Criminal Court, which shall determine the lawfulness of the detention and order the arrestee's release if the arrest was unlawful or the detention is unnecessary to guarantee the arrestee's appearance in court or the safety of others.

1.2.4. Right against self-incrimination: Every person has the right not to be compelled to give self-incriminating testimony, to plead guilty, or to confess to wrongdoing; and any statement by an accused person shall qualify as legal evidence only if it is made free from coercion.

1.2.5. Right to counsel: Every person who is accused of a crime or subjected to coercive measures shall have the right to be assisted and represented by retained legal counsel of the accused's own choosing; to communicate freely and privately with counsel; and, if unrepresented, to be informed of the right to counsel and provided adequate time to engage such counsel.

1.2.6. Due process: In the determination of any criminal charge against a person, the accused shall be entitled:

1.2.6.1. To be informed promptly and in detail sufficient to understand the nature and cause of any charge made;

1.2.6.2. To have time, access to evidence held by the prosecution, and, if in custody, facilities adequate for the preparation of a defense;

1.2.6.3. To be present at trial and to defend against any charge either personally or through legal assistance consistent with the right to counsel in CoD § 7.1.2.5;

1.2.6.4. To be tried before a competent, independent, and impartial court established by law; and

1.2.6.5. To be tried without undue delay in a fair and transparent process of hearings and reasoned judgments, which shall be made public except in cases of juveniles or to protect the administration of justice from violent interference.

1.2.7. Disclosure and compulsory process: Every person charged with a crime shall have the right to full disclosure of all information possessed by the prosecution relevant to the accused's guilt or punishment; to examine, or have examined, any witness against the accused; and to the attendance and examination of witnesses on behalf of the accused under the same conditions as witnesses for the prosecution.

1.2.8. Standard of proof: Every person charged with a crime shall have the right to be presumed innocent unless and until the accused's guilt is proven beyond a reasonable doubt. Punishments may be inflicted only after a judgment of conviction by a court having jurisdiction over the accused and the subject matter.

1.2.9. Double jeopardy: No person shall be tried or punished twice for any criminal offense already subjected to prosecution in or outside of Destiny, unless the prior criminal proceeding was dismissed due to lack of jurisdiction or instituted with the primary purpose of establishing a defense of prior prosecution (double jeopardy).

1.2.10. Humane, appropriate, and proportionate treatment:

1.2.10.1. No person shall be subjected to torture or to deadly, corporal, cruel and unusual, inhumane, or degrading punishment or treatment. No person deprived of liberty shall suffer arbitrary, gratuitous, or ceremonial humiliation.

1.2.10.2. Accused persons shall be segregated from convicted persons and be accorded treatment consistent with the presumption of innocence in CoD § 7.1.2.8. Juveniles shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

1.2.10.3. The severity of penalties must not be grossly disproportionate to the criminal offense. No person shall be held in slavery or in servitude. No person shall be required to perform forced or compulsory labor, except for work or service reasonably required of a person who has been conditionally released from detention pursuant to the lawful order of a Criminal Court.

1.2.11. Review and clemency: Every person convicted of a crime shall have the right to appellate review of the conviction and sentence, as well as the right to seek clemency, according to the provisions of the Code of Destiny and the Constitution of Saint Christopher and Nevis.

§ 1.3. Criminal Jurisdiction: The provisions of this Criminal Code shall apply to all criminal offenses unless otherwise provided by law.

1.3.1. This Code applies to any offense that a person commits directly, or through a person for whom the offender is criminally liable, if:

1.3.1.1. The offense is committed either wholly or partly within the Area;

1.3.1.2. The conduct outside the Area constitutes an attempt to commit an offense within the Area;

1.3.1.3. The conduct outside the Area constitutes a conspiracy to commit an offense within the Area, and an overt act in furtherance of the conspiracy occurs in the Area;

1.3.1.4. The conduct violates a law or rule of Destiny that expressly prohibits conduct outside the Area; or

1.3.1.5. The offense definition includes electronic media and the communication or storage of that media occurs on facilities within the Area.

1.3.2. When culpability for an offense is contingent on or affected by an actual or intended effect, the offense shall be deemed to have been committed also at the place where the effect occurred or was intended to occur.

1.3.3. Consistent with CoD § 7.1.2.1, the criminal legislation at the time of the criminal act applies unless the legislation at the time of the decision results in a more favorable outcome for the person charged.

§ 1.4. Liability for Misenforcement of Criminal Law: Any party subject to the misenforcement of criminal law shall enjoy all civil and criminal rights and remedies afforded under the Code of Destiny against those wrongs.

§ 1.5. Interpretation and Application: The interpretation of offenses shall be consistent with CoD § 7.1.1, and no person shall be subject to criminal consequences based on analogy to the offenses contained in the Laws of Saint Christopher and Nevis.

1.5.1. When interpreting a provision of this Code, the plain meaning of the statutory text shall control unless ambiguity makes its meaning doubtful.

1.5.2. If ambiguity obscures a provision's meaning, the structure, purpose, and history of the provision also may be examined.

1.5.3. If the meaning of the language is still susceptible to differing interpretations, it shall be construed to further the general purposes stated in this Code.

1.5.4. If the meaning of a provision remains in doubt after examining the statutory text, the provision's structure, purpose, and history, and the general purposes of this Code, then the interpretation that is most favorable to the accused shall apply.

1.5.5. Headings that appear at the beginning of subdivisions in this Code may aid the interpretation of otherwise ambiguous statutory language.

1.5.6. Commentary or supporting case law may have a persuasive effect.

1.5.7. Unless the context requires otherwise, in this Code:

1.5.7.1. Singular and plural words may, and where necessary shall, be treated as interchangeable.

1.5.7.2. Words indicating gender may, and where necessary shall, be treated as interchangeable.

1.5.7.3. Monetary values are measured in Eastern Caribbean Dollars (XCD), which shall be adjusted for inflation as of the effective date of the Code of Destiny.

1.5.7.4. An offense is a felony if its prescribed maximum term of imprisonment, determined under CoD § 7.1.5.7.5, exceeds 1 year, and every other offense is a misdemeanor.

1.5.7.5. Where this Chapter conditions a procedural or sentencing consequence on an offense's prescribed minimum term of imprisonment, and the incorporated Enactment prescribes a maximum but no minimum, the prescribed minimum shall be deemed to be zero. This Subsection does not authorize a

sentence below any statutory minimum that the Enactment does prescribe. A penalty stated for one mode of trial applies without regard to the mode of trial; but where different penalties are stated for different modes of trial, the penalty stated for conviction on indictment or before the High Court applies. Where the applicable penalty authorizes imprisonment and prescribes no maximum term, the prescribed maximum term shall be deemed to be 1 year or, where it prescribes a minimum term, 30 years, without limiting the sentence that may be imposed. Imprisonment for life exceeds every term of years.

§ 1.6. Interaction with Civil Law: Unless this Code or another statute provides otherwise, the outcome of a civil proceeding shall not alone determine the outcome of a criminal proceeding.

§ 1.7. Substantive Catchall Rule: No case may be decided contrary to common practice, the general tenor of the Code of Destiny, or a decent respect for human dignity.

Art. 2: Substantive Criminal Law

§ 2.1. Penal Code: The substantive criminal law of the Federation of Saint Christopher and Nevis shall apply within the Zone. An offense so applied is an offense under the Code of Destiny.

§ 2.2. Administrative Matters: For the avoidance of doubt, CoD § 7.2.1 shall exclude offenses related to compliance with administrative provisions not applicable in the Zone.

Art. 3: Procedural Criminal Law

§ 3.1. Purpose: The general purposes of the Criminal Procedure Code are:

3.1.1. To provide comprehensive and uniform practice and procedure in the courts of Destiny for the investigation of criminal offenses, the prosecution of criminal cases, the conduct of criminal proceedings, the punishment of crimes and the treatment of offenders, and the rules that are applicable to all parties and participants involved in criminal cases, proceedings, and punishments;

3.1.2. To guarantee that crimes are investigated and prosecuted effectively and efficiently, without unjustifiable expense or delay;

3.1.3. To guarantee that suspects, accused persons, victims, and all other persons coming into contact with the criminal justice system are treated equitably, fairly, and in a manner that complies with their rights under CoD Chapter 1; and

3.1.4. To promote a safe, secure, and orderly society governed by the rule of law.

§ 3.2. Criminal Procedure Code:

CoD § 7.3.2: CRIMINAL PROCEDURE CODE

1. Professionals and Parties

1.1. Courts and Court Officers

§ 1.1.1. Criminal Courts of Destiny

1. An independent and honorable court system for the adjudication of crime is indispensable to justice in Destiny.
2. Unless otherwise specified, a Court in this Code is the Judge or panel of Judges that currently has the privilege, power, and duty to make judicial decisions on cases within their jurisdiction, in the following descending order of authority and precedent within their respective competence:
    a. the Appeals Court;
    b. the Collateral Court;
    c. the Trial Court; or
    d. the Complaint Judge.
3. The purpose of a Complaint Judge in criminal cases includes:
    a. to determine, based on the allegations, presented evidence, and legal arguments, whether a Complaint states an offense for which there is probable cause to believe the accused committed the offense;
    b. to safeguard the rights under CoD Chapter 1 of everyone affected by the alleged offense and its investigation, and particularly the rights of the accused and anyone subject to coercive measures pursuant to Articles 2.2 through 2.4 of this Code; and
    c. to interpret and apply relevant substantive provisions, rules of procedure, and legal precedents to the specific facts alleged in the Complaint and supported by evidence and legal arguments, ensuring consistency and adherence to established legal principles.
4. The purpose of a Trial Court in criminal cases includes:
    a. to determine, based on presented evidence and legal arguments, whether the Defendant is guilty or not guilty of the alleged offense;
    b. to safeguard the rights under CoD Chapter 1 of all Parties, and particularly the rights of the Defendant pursuant to the Code of Destiny (hereinafter “CoD”) Article 1.11 and any Victim pursuant to Article 1.6 of this Code;
    c. to serve as a forum for the presentation and examination of evidence, including admissible testimony, records, objects, and data, to establish the facts of the case;

   d. to interpret and apply relevant substantive provisions, rules of procedure, and legal precedents to the specific facts of the case, ensuring consistency and adherence to established legal principles; and
   e. upon a finding of guilt, to impose appropriate sentences and sanctions in accordance with applicable sentencing rules and constraints.
5. The purpose of a Collateral Court in criminal cases and collateral proceedings includes:
   a. to determine, with due deference to any prior court decisions in the underlying criminal case, the validity of the Defendant's conviction and sentence based on newly discovered evidence and related legal arguments;
   b. upon succession of a Criminal Court's jurisdiction, to review as necessary the ongoing legality of custody or supervision of the Defendant or other Petitioner, including the execution of and compliance with the sentence under Articles 6.1 through 6.3; and
   c. to interpret and apply relevant substantive provisions, rules of procedure, and legal precedents to the specific facts of the case or collateral proceeding, ensuring consistency and adherence to established legal principles.
6. The purpose of an Appeals Court in criminal cases and collateral proceedings includes:
   a. to protect Defendants, Petitioners, Applicants, and other Appellants against prejudicial legal error in the proceedings leading to conviction and sentence, an order of detention, or other collateral order; and against judgments and other dispositive orders, issued by a Complaint Judge, Trial Court, or Collateral Court, unsupported by sufficient evidence; and
   b. to interpret and apply relevant substantive provisions, rules of procedure, and legal precedents to the specific facts of the appeal, fostering and maintaining uniform, consistent standards and practices in the criminal process and any collateral proceedings.

§ 1.1.2. Officers of the Court

1. As integral parts of the judicial system, Officers of the Court exist to advance the ends of justice, with duties incident to their status and roles in the formation, operation, or enforcement of the decisions of Courts of Destiny. Officers of the Court have a special responsibility for the quality of justice which places their duties to the Court above the interests of their clients, where applicable, and themselves.
2. Officers of the Court include:
   a. Attorneys—including Prosecutors and Defense Counsel—appearing before or otherwise participating in criminal cases and collateral proceedings before the Court pursuant to Articles 1.3 and 1.4, and Sections 1.5.4 and 1.6.3.6;
   b. Enforcement Agents under Article 1.7;
   c. Registrars under Article 1.8;
   d. Neutrals under Article 1.9; and
   e. any staff or employees of an Officer of the Court while acting within the scope of professional duties.
3. Officers of the Court are subject to:
   a. the control of any Court before which they appear or practice, and are answerable to such Courts for the proper performance of their professional duties;

b. discipline by the Court and liable to punishment for contempt in violating their duties in that capacity; and
c. removal from processes due to conflicts or revocation of registration as an Officer of the Court for misconduct.

4. Before entering upon the duties owed under this Code, Officers of the Court must register their identity and proof of qualifications to practice under this Code on an Authoritative Criminal Registry.
    a. In addition to any further admissions criteria specified elsewhere in this Code—and unless a more extensive oath or affirmation is required therein—the record under this Section must include, either in a signed written statement or an audiovisual recording, the following oath or affirmation by the Officer of the Court:

        > "I hereby promise that I have fully disclosed my qualifications, criminal record, and any conflict of interest, and will discharge my duties ethically and competently, based on my understanding of the relevant law. I foresee and intend that the community will rely on this promise and hereby offer to pay double any civil damages awarded for my breach of it, this offer to be held open for the applicable time limitations in consideration of the trust vested in me."

    b. In addition to more specific requirements elsewhere in this Code, an Officer of the Court must have in place a plan of succession to maintain the duties owed under this Code and to ensure legal continuity in criminal cases if the Officer is unable or unwilling to fulfill such duties or is ineligible to do so pursuant to Sections 1.1.3 through 1.1.7.

§ 1.1.3. General Duties and Disqualifications

1. The duties of an Officer of the Court include:
    a. to respect and comply with all pertinent and lawful orders of the Court and the requirements of this Code;
    b. to aid the administration of justice through honorable dealing in good faith;
    c. not to engage in conduct prejudicial to the administration of justice, including acts of dishonesty, fraud, deceit, misrepresentation, and moral turpitude;
    d. with the care of a professional fiduciary, in accordance with generally accepted accounting practice, and subject to any recordkeeping rules requested by the Court:
        i. to receive, record, and hold the property (including securities) of Parties to a criminal case or collateral proceeding; and
        ii. to receive, record, keep separate, and distribute monies (including fines or applicable court fees), as ordered by the Court or agreed with a Party;
    e. to assist the Court in avoiding error and in reaching proper decisions in accordance with justice and the established rules of practice;
    f. to act with candor toward the Court or a Judge acting in a judicial capacity;
    g. never to seek to mislead the Court, or a Judge acting in a judicial capacity, by artifice or false statement of fact or law;
    h. to inform the Court when a material statement of fact or law has become false or misleading in light of subsequent events;

i. to maintain the confidentiality of privileged communications and information, and proceedings before the Court that are closed to the public—or are held in camera, meaning a judicial proceeding or examination of evidence conducted in the Judge's private chambers and attended only by individuals whose presence is required by fact or by law;
j. to take reasonable steps to understand the persons affected by a matter related to the Officer of the Court's service, so as to have the necessary knowledge to identify a duty of excusal pursuant to Section 1.1.4;
k. to disclose to the Court or other proper authority any actual knowledge of crimes committed by other Officers of the Court;
l. to serve or offer to serve in the capacity as an Officer of the Court without discrimination on the basis of attributes protected under CoD Chapter 1; and
m. not to hold membership in any society, group, or assembly of persons who teach, advocate, or encourage:
    i. the commission of offenses;
    ii. the violation of rights in CoD Chapter 1, or a denial of criminal process due to any portion of society; or
    iii. disrupting social order or peace, or securing influence over public affairs, by committing vandalism, sabotage, or other acts of violence.

2. At the time of appointment, or at any time during their service, a person who serves as an Officer of the Court must not:
    a. be under 18 years of age;
    b. register as more than one type of Officer of the Court listed in Section 1.1.2.2;
    c. be subject to a suspension or revocation of registration pursuant to Section 1.1.7;
    d. meet any of the criteria for removal pursuant to Section 1.1.5;
    e. be subject to ongoing criminal proceedings in Destiny, or in another jurisdiction where the alleged crimes would be offenses if committed in Destiny;
    f. have ever been convicted of a felony in Destiny, or an offense in another jurisdiction that would have been a felony if committed in Destiny; or
    g. have been convicted of a misdemeanor in Destiny, or an offense in another jurisdiction that would have been a misdemeanor if committed in Destiny, within the last five years.

§ 1.1.4. Excusal

1. A person must excuse himself from participating as an Officer of the Court in a criminal case, collateral proceeding, or appeal—or in pursuing, executing, or reviewing a coercive measure under Articles 2.2 through 2.4—where there is probable cause to doubt his ability to serve ethically and without conflict.
2. General reasons for excusal include:
    a. the person no longer meets the qualification criteria, or meets the disqualification criteria, for the role;
    b. the person is unwilling or unable to faithfully and competently exercise his function;
    c. the person has a personal bias or prejudice concerning a Party—or personal knowledge of disputed evidentiary facts concerning a proceeding—excepting the ethical partisanship of an Attorney for a Party;

d. the person knows that he, individually or as a fiduciary—or the person's spouse or minor children residing in his household—has a financial interest in the subject matter in controversy or in a Party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
e. his spouse—or a person related within the first degree of relationship, or the spouse of such a person—is:
    i. a Party to the proceeding; or
    ii. an officer, director, or trustee of a Party, who is:
        1. known to have an interest that could be substantially affected by the outcome of the proceeding; or
        2. to his knowledge, likely to be a material witness in the proceeding;
f. the person has previously participated—or anticipates or should anticipate, participating—in the proceeding in a non-judicial capacity, or has expressed an opinion concerning the merits of the particular case in controversy; or
g. any other reasonably identifiable conflict of interest.

3. Additional reasons for excusal of a Judge include:
    a. he served as an Attorney in the matter in controversy or has been a material witness; or
    b. his spouse—or a person related to either within the third degree of relationship, or the spouse of such a person—is:
        i. a Party to the proceeding; or
        ii. an officer, director, or trustee of a Party, who is:
            1. known to have an interest that could be substantially affected by the outcome of the proceeding; or
            2. to his knowledge, likely to be a material witness in the proceeding.
4. The procedure for an excusal is:
    a. in the case of an Officer of the Court under the jurisdiction of a Trial Court Judge or a Presiding Appeals Court Judge, by making a request to the Court, which must issue a timely decision on such a request;
    b. in the case of a Trial Court Judge or Presiding Appeals Court Judge, by disclosing to the Parties on the record the basis of potential excusal, on which the Parties and their Attorneys must:
        i. have an opportunity to confer outside the presence of the Judge; and
        ii. then choose either to accept the Judge's excusal or, by unanimous agreement in writing on the record, to allow the Judge to continue to participate; or
    c. in all other cases, by placing a signed written statement of excusal on the Authoritative Criminal Registry.

§ 1.1.5. Removal

1. In the event an Officer of the Court fails to excuse himself pursuant to Section 1.1.4—where there is probable cause to believe he should do so—a Party or the Court may bring a motion to remove the conflicted Officer of the Court. A motion for removal does not suspend the proceedings.
2. The procedure for a removal is:

a. in the case of an Officer of the Court under the jurisdiction of a Court currently in session:
    i. by making a written motion to the Court, which must issue a timely decision on such a motion; or
    ii. by motion of the Court, which must provide notice and an opportunity to be heard by the affected Officer of the Court and Parties to the case, before issuing a timely decision on the motion; or
b. in all other cases, by the appointment of a Collateral Court pursuant to Section 5.3.1, which must issue a timely decision on such a motion.

3. Consistent with the requirements of Article 3.2:
    a. a removal motion by a Party must include a written sworn statement of the grounds upon which the request lies, and any relevant evidence must be submitted with the motion to the Court and Registry;
    b. a Prosecutor whose impartiality is doubted is entitled to present to the Court a written response along with any relevant evidence; and
    c. in a challenge to a Judge, other Parties are entitled to present to the Court a written submission along with any relevant evidence.
4. The Court reviewing the motion must grant the request for removal based on a finding of clear and convincing evidence that the individual in question is unable to serve under this Article or this Chapter.
    a. The Court reviewing the motion, prior to issuing a decision or in conjunction with a tentative ruling, may order a hearing for the presentation of arguments and any additional evidence.
    b. In appropriate cases, the motion for removal may be denied solely on the basis of the written sworn statement and any evidence accompanying it—and, if submitted pursuant to Subsection 3.b, any written response and accompanying evidence—as well as any other permissible submission on the motion.
5. In the event that an attempt to remove under this Section fails, a Party bringing the claim shall pay double the legal costs incurred by the affected Officer of the Court.

§ 1.1.6. Replacement

1. Where an Officer of the Court is excused or removed from an ongoing court process:
    a. his replacement shall be appointed by the same method by which he was appointed;
    b. he must effect a competent handover of duties to his replacement, including all relevant files;
    c. he must take no further part in the case; and
    d. all actions taken prior to excusal or removal are presumed to be valid until the point in time of his excusal, but those actions may be challenged as invalid by motion of another Party or by the Court.
2. In the case of removal of a Prosecutor only:
    a. he must pay all costs of prosecution and intervention incurred as of the motion being granted by the Court; and
    b. he shall receive no proceeds from the original case's completion, other than those due to him as a Victim under Article 1.6.

§ 1.1.7. Suspension or Barring of Registration

1. In the event a Civil Court or the Chief Justice of the Eastern Caribbean Supreme Court finds an Officer of the Court has broken their oath or affirmation of office registered on the Authoritative Criminal Registry pursuant to this Chapter, that authority may, in addition to other remedies, order that the person's registration:
    a. be marked as suspended for a period not exceeding five years; or
    b. be revoked and the person be permanently barred from re-registering.
2. The Court or the Chief Justice may order a suspension when it finds:
    a. by a preponderance of evidence, the person:
        i. did not apply appropriate diligence or ethical standards in the exercise of his duties, handling of evidence, or handling of client or court funds; or
        ii. suffers substance abuse or mental health issues that make the person unfit for service; or
    b. by clear and convincing evidence, the person failed to excuse himself as required under Section 1.1.4.
3. The Court or the Chief Justice may order revocation and barring when it finds clear and convincing evidence that the person has engaged in a repeated pattern of behavior indicating that the reasons for suspension in Subsection 2 are likely to recur indefinitely.
4. Any such suspension or barring must be recorded on an Authoritative Criminal Registry—and for the duration of a suspension or barring of registration, the person may not serve as an Officer of the Court.
5. Any finding or order regarding suspension or barring of registration under this Section does not preclude the person from being prosecuted and punished for an offense related to the subject of the finding or order.

§ 1.1.8. Protection of Confidentiality

1. An Officer of the Court shall take all reasonable measures to prevent unauthorized access to, or disclosure of, information obtained in criminal proceedings that relates to an individual's personal affairs, as well as the individual's technical devices or procedures and operational or business information that is sensitive for competitive reasons. The duty of confidentiality—which is owed to the individual to whom the information pertains—shall continue to apply after the person concerned has terminated their employment or service.

2. An Officer of the Court shall not exploit information covered by Subsection 1—including information disclosed pursuant to Articles 2.1, 2.2, 4.3, 4.4, 5.2, 5.3, 6.2, and 6.3—for their own benefit or that of third persons.

3. The duty of confidentiality shall not prevent information from being disclosed to the Parties, Victims, or their representatives—and otherwise to those whom the information directly concerns—where the information is:

    a. necessary in order to prevent the commission of criminal offenses, serious civil wrongdoing, or other violations of rights protected under the Code of Destiny;

    b. being used in a claim for compensation in connection with the case, or in defense to a civil or criminal action for wrongdoing related to the case; or

c. subject to a lawful court order.

4. The Court shall impose a duty of confidentiality on any person as a precondition to receiving information that must be kept confidential pursuant to this Section.

5. The Officer of the Court shall ensure that the duty of confidentiality is made known to those to whom it applies, and may require a statement in writing to the effect that they are familiar with and will observe the rules.

6. Documents and other material that contain information subject to a duty of confidentiality shall be kept in safe custody.

1.2. Judges

§ 1.2.1. Relationship with the Eastern Caribbean Supreme Court

1. The power of the Chief Justice under section 17(2)(a) of the Supreme Court Order to make rules for the selection of judges for any purpose includes the power to delegate, subject to the Constitution, the allocation of judges to cases in Destiny, provided such delegation is consistent with the requirements of independence and impartiality under section 10 of the Constitution.

2. All Judges serving in the Courts of Destiny under this Code shall be judges of the Eastern Caribbean Supreme Court, appointed by the Judicial and Legal Services Commission in accordance with the provisions of the Supreme Court Order.

§ 1.2.2. Judicial Selection and Authority

1. The Chief Justice shall allocate judges to cases in Destiny, as contemplated by this Article, in accordance with Section 17(2)(a) of the Supreme Court Order.
2. Wherever this Code requires a Judge, he or she shall be a duly appointed judge of the Eastern Caribbean Supreme Court, appointed in accordance with the Supreme Court Order by the Judicial and Legal Services Commission, and allocated to the case by the Chief Justice.
3. A Judge may be appointed to serve in only one judicial role in each case:
    a. to review an application as a Complaint Judge pursuant to Section 2.1.1;
    b. to serve as a Trial Court Judge pursuant to Section 2.2.8, Articles 3.1 through 5.1, and Articles 6.1 and 6.2;
    c. to serve as a Collateral Court Judge pursuant to Article 5.3; or
    d. to serve as an Appeals Court Judge pursuant to Article 5.2.
4. A Warrant, court order, judgment, or other decision—issued lawfully under authority of this Code—shall have the force and effect of law in Destiny.

1.3. Attorneys

§ 1.3.1. Duties of Attorneys

1. In addition to the duties under Section 1.1.3, an Attorney practicing law in criminal proceedings has a special responsibility for the quality of justice in the Courts of Destiny.
2. The duties of Attorneys include:
    a. to represent clients zealously within the bounds of the law and professional ethics, including:
        i. rendering independent professional advice to their clients;
        ii. informing their clients when their duty of candor or other obligations as an Officer of the Court prevail over their duties to the client; and
        iii. maintaining appropriate protections of confidentiality pursuant to Sections 1.1.8, 1.3.4, and 1.3.5, by classification pursuant to Section 3.1.3, or as otherwise provided by court order;
    b. to behave with professional courtesy toward the Court and other Attorneys, and to assist the Court in conducting the proceedings with decorum;
    c. to act in a fair manner in dealing with other Parties and their Attorneys, including:
        i. to litigate a criminal case with reasonable diligence and cooperate in bringing it to trial or other disposition without undue delay;
        ii. never to engage in misleading communications, frivolous claims and defenses, abusive tactics, and all other conduct that detract from the role of Attorneys as Officers of the Court; and
        iii. in ex parte proceedings, to disclose all material facts known to the Attorney that would be helpful to the Court in reaching a just conclusion in the proceeding;
    d. to disclose those facts necessary to correct a misapprehension that has arisen in an application for admission to the practice of law or in a disciplinary matter;
    e. to disclose to the Court legal authority known to the Attorney that:
        i. is directly contrary to the claim being pressed; or
        ii. is likely to have a substantial effect on the determination of a material issue in the case, regardless of its effect on the client's cause;
    f. to disclose to the Court, or other proper authorities, actual knowledge of any ethical violation by other Attorneys and Judges that calls into question their fitness to practice;
    g. to disclose to the Court:
        i. any information indicating that a person other than a client has perpetrated a fraud upon the Court;
        ii. non-privileged information indicating that a client has, in the course of the Attorney's representation, perpetrated a fraud on a person or the Court, if the client refuses to reveal the fraud after being urged by the Attorney to do so;
        iii. any information if necessary to prevent a client from committing an act that would result in death, serious physical injury, or wrongful confinement of another person; and

iv. circumstances in which a conflict of interest currently exists or would arise in the case due to the Attorney's participation before the Court;

h. never to communicate directly with a Party known to be legally represented without the other Attorney's consent, nor to mislead another person who is not legally represented as to the Attorney's role in a matter;
i. never to threaten to bring criminal charges when the sole purpose of that threat is to gain an advantage in a civil matter;
j. never to agree to represent persons who propose to commit an offense, unless the offense was a good faith effort to test the validity or application of law;
k. after taking possession of the fruits or instrumentalities of a crime, to disclose the evidence to the Court or other proper authorities; and
l. never to state or imply that the Attorney is able to influence a Judge on improper or irrelevant grounds.

3. In the event an Attorney feels that he cannot fulfill his duties, the Attorney must seek to recuse himself from the proceedings.

§ 1.3.2. Attorney Admissions

1. No Attorney may participate or appear in a proceeding in a Criminal Court of Destiny unless the Attorney's right to practice is recorded on an Authoritative Criminal Registry. Such a record requires attestation of a panel of Neutrals summoned pursuant to Section 1.9.2 that, following an interview and background check, they reasonably believe the Attorney:
    a. is of good character and sound mind;
    b. has appropriate knowledge of Destiny law; and
    c. has been admitted to practice law in a reputable legal jurisdiction, or has practiced for five years under the supervision of an Attorney admitted to practice in Destiny.
2. If a panel of Neutrals declines to issue an attestation pursuant to Subsection 1, the person may not attempt another registration within six months.
3. An Attorney's registration of a right to practice may be revoked pursuant to Section 1.1.7.

§ 1.3.3. Required Representation

1. Except pursuant to Subsection 2, the Prosecutor and any Party seeking to participate other than as a witness in a criminal case or collateral proceeding must be an Attorney admitted to practice in Destiny or be represented by such an Attorney.
2. Attorney representation is not required:
    a. for Defendants who waive their right to counsel pursuant to Section 1.5.5; or
    b. for Victims not serving as the Prosecutor, who are exercising their rights under Article 1.6; but
    c. any submissions and arguments made pursuant to this Subsection must comply with all legal requirements except by leave of the Court.
3. Once a conflict-free Judge has been appointed pursuant to Article 1.2, a Party may not subsequently select an Attorney whose participation in the criminal case or collateral proceeding would create a conflict of interest:
    a. with the Judge; or

b. with other Parties, unless such conflict is waived by all Parties pursuant to Section 1.5.6 and approved by the Court.

§ 1.3.4. Attorney-Client Privilege

1. Under this Section:
    a. a “Client” means a Party (except for the Prosecutor) and any other participant (except for an Enforcement Agent) in a criminal case or collateral proceeding, for whom an Attorney renders professional legal services or who consults an Attorney with a view to obtaining professional legal services from the Attorney;
    b. a communication is “confidential” if it is not intended to be disclosed to third parties, except for persons involved in providing professional legal services to the client or whose participation is reasonably necessary to convey the communication;
    c. “representative of the client” means:
        i. a person having authority to obtain professional legal services—or to act on legal advice provided—on behalf of the client; or
        ii. a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client; and
    d. “representative of the Attorney” means a person employed—or reasonably believed by the client to be employed—by the Attorney to assist in providing professional legal services.
2. In a criminal case or collateral proceeding, a client holds the privilege to refuse to disclose—and to prevent others from disclosing—any confidential communication made for the purpose of obtaining or facilitating the provision of professional legal services from an Attorney:
    a. between the client or a representative of the client and the client’s Attorney or a representative of the Attorney;
    b. between the Attorney and a representative of the Attorney;
    c. by the client, a representative of the client, the client’s Attorney, or a representative of the Attorney—to an Attorney, or a representative of an Attorney, representing another Party in a pending action and concerning a matter of common interest in that action;
    d. between representatives of the client, or between the client and a representative of the client; or
    e. among Attorneys and representatives of the Attorneys, who represent the same client.
3. The privilege under this Section may be claimed by the client; the client’s guardian or conservator; the personal representative of a deceased client; or the successor, trustee, or similar representative of a corporation, association, or other organization. A person who was the Attorney or representative of the Attorney at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the client.
4. There is no privilege under this Section:
    a. if the services of the Attorney were sought or obtained to enable or aid anyone to commit—or to plan to commit—what the client knew, or reasonably should have known, was a crime or fraud;

b. as to a communication relevant to an issue of breach of duty by an Attorney to the client, or by a client to the Attorney;
c. as to a communication necessary for an Attorney to defend in a legal proceeding an accusation that the Attorney assisted the client in criminal or fraudulent conduct;
d. as to a communication relevant to an issue concerning an attested document to which the Attorney is an attesting witness; or
e. as to a communication relevant to a matter of common interest between or among two or more clients:
    i. if the communication was made by any of them to an Attorney retained or consulted in common,
    ii. when offered in an action between or among any of the clients.

§ 1.3.5. Attorney Work Product

1. Disclosure is not required for legal research—or for records, correspondence, reports or memoranda—insofar as they contain the opinions, theories, or conclusions of:
    a. the Prosecutor and members of the Prosecutor's legal or investigative staff;
    b. a Warrant Agent and members of the Warrant Agency’s legal or investigative staff; or
    c. Attorneys serving as Defense Counsel or Defense Counsel's legal or investigative staff under Section 1.5.4.
2. Any materials furnished to an Attorney under this Section shall be disclosed only to others to the extent necessary for the proper conduct of the case.
3. A communication between a Prosecutor or Warrant Agent and an Attorney is only privileged if:
    a. it meets the requirements of Subsections 1.a. or 1.b; or
    b. it concerns an unexecuted, currently pending coercive measure (including a Warrant) or other order of the Court—which has determined that disclosure will seriously impair the ability of the Agency to act upon the coercive measure or court order in the investigation, litigation, and judgment in a criminal case or collateral proceeding.

1.4. Prosecutors

§ 1.4.1. Standing to Prosecute

1. An offense under the Code of Destiny may be prosecuted by the following persons, in descending order of precedence:
    a. a Victim of the offense as defined by Section 1.6.1;
    b. a guardian or estate of a Victim;
    c. if the Victim is unable to act as Prosecutor and has failed to authorize an agent, a next-of-kin of a Victim, with precedence among next-of-kin:
        i. by proximity of relation to the Victim; and
        ii. in cases of equal relational proximity to the Victim, by age seniority;
    d. the Property Owner of the real property on which the alleged act or acts giving rise to the accusation occurred;
    e. for felonies only, any Property Owner; or
    f. for offenses subject to extradition, another criminal jurisdiction or its representatives seeking a person's extradition pursuant to Article 5.4.
2. Standing to prosecute is subject to required representation pursuant to Section 1.3.3.
3. Standing to prosecute may be transferred to a specially authorized agent, who is then subject to, among other things, Subsection 2.
4. In case of charges of multiple offenses for the same act, it shall be deemed sufficient to qualify as Prosecutor for any of the offenses.
5. No person may act as Prosecutor with respect to circumstances which overlap with those under which that person has been, could be, or is accused of crime—or in other circumstances in which a conflict of interest currently exists or would arise from that person's appointment as Prosecutor.
6. Where interested persons of equal precedence fail to select one among themselves to act as sole Prosecutor—or to specially authorize a single agent to do so—the interested person who is prepared to post the largest prosecution bond, securing faithful execution of duties, shall act as Prosecutor.
7. Where materially overlapping facts give rise to multiple Prosecutors bringing separate Complaints involving offenses or Defendants that could have been joined in a single Complaint pursuant to Section 2.1.3, and:
    a. none of the Complaints was brought pursuant to Subsection 1.a;
    b. the several Prosecutors have not agreed upon a single Prosecutor or a designated agent to act on their collective behalf; and
    c. the Defendant or Defendants and any interested Victims have been provided notice and an opportunity to be heard—then:
        i. a Collateral Court under Section 5.3.1 shall appoint a single Prosecutor who:
            1. is willing and able to pursue all viable offenses in the consolidated case; and
            2. posts the largest prosecution bond securing faithful execution of duties; and
        ii. proceedings thereafter shall be under a single superseding Complaint brought by the single Prosecutor selected by the Collateral Court, the Judge of which shall be ineligible to serve in the Trial Court.

§ 1.4.2. Prosecution Bond and Party Notice

1. Any person interested in acting as Prosecutor shall provide to the Court, upon formation, a prosecution bond as security for the Complaint filed pursuant to Article 2.1.
    a. The amount of such bond shall be sufficient, in the opinion of the Court, to cover the expected cost of the full proceedings—including a potential appeal—and the cost of coercive measures that are reasonably expected to be required.
    b. During the course of the case, the Court may increase the bond requirements—in light of the required scope of proceedings and other circumstances—and set a timeline for submission. If the prosecution bond is not provided within the time set, the case shall be dismissed without prejudice to potential further prosecution.
2. After the docketing of a case and the posting of notice of intent to prosecute pursuant to Section 1.8.2.1.b.i, the person interested in acting as Prosecutor shall inform any other potentially interested persons of the same or higher precedence under Section 1.4.1 about the person's intention to act as Prosecutor, provided that:
    a. if individual notification is not feasible with reasonable effort (e.g., due to the number of potentially interested persons), adequate public announcement may supplement or replace individual notification;
    b. if no other person announces their interest to act as Prosecutor within two weeks after notification or public announcement, it shall be deemed that no other person has such interest; and
    c. if such information or announcement would seriously jeopardize a criminal investigation, the person interested may proceed with steps that cannot be delayed—but the person must provide notice to other potentially interested persons and, if necessary, make a public announcement at the soonest opportunity feasible.

§ 1.4.3. Duties of Prosecutor

1. Prosecutors must perform their duties in accordance with the applicable law and their oath or affirmation. General duties include:
    a. to act without prejudice;
    b. not to allow family, social, political, financial, or other relationships to influence their professional conduct or judgment;
    c. to uphold the appearance of fairness by excusing themselves when reasonable to do so under Section 1.1.4; and
    d. never to engage in activities—or to maintain interests in activities or entities—that affect their commitment to the faithful execution of duties under this Section and the Code.
2. Any person who assumes the role of Prosecutor shall answer for faithful execution of duties, which include:
    a. examining information on alleged criminal offenses committed in Destiny;
    b. directing and supervising any investigation of such offenses and the collection of evidence;

c. requesting that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2;
d. litigating criminal proceedings before the Courts of Destiny; and
e. undertaking such other responsibilities as provided for by law.

3. In the exercise of their duties, Prosecutors must:
    a. take appropriate measures to ensure the effective investigation and prosecution of criminal offenses in Destiny—and in doing so, respect the interests and personal circumstances of Victims and witnesses, and take into account the nature of the offense;
    b. extend the investigation of criminal offenses to cover all facts and evidence relevant to an assessment of whether a suspect or an accused is criminally responsible—and in doing so, investigate incriminating and exonerating circumstances equally;
    c. oversee the lawfulness of actions taken by Warrant Agents and Agencies involved in criminal investigations or proceedings on behalf, or at the request, of the Prosecutor;
    d. exercise due care in determining whether to pursue a criminal case and, if so, for which offenses, based on an individualized assessment of all the facts and circumstances of each particular case;
    e. in the absence of unusual facts and circumstances, charge the highest grade of offense that is:
        i. encompassed by the Defendant's conduct; and
        ii. likely to result in a sustainable conviction;
    f. refrain from:
        i. charging an offense the Prosecutor knows is not supported by probable cause; or
        ii. prosecuting at trial an offense the Prosecutor knows is not supported by proof beyond a reasonable doubt;
    g. make reasonable efforts to assure that the accused has been advised of the right to—and the procedure for obtaining—legal representation, and has been given reasonable opportunity to obtain Defense Counsel;
    h. not seek to obtain from an unrepresented accused a waiver of important pretrial or trial rights, including those protected in Sections 1.5.1 through 1.5.4;
    i. make timely disclosure to the Defendant of all evidence or information known to the Prosecutor that tends to negate the guilt of the accused or mitigates the offense—and, in connection with sentencing, disclose to the Defendant and to the Court all unprivileged mitigating information known to the Prosecutor—except when the Prosecutor is relieved of this responsibility by a protective order of the Court pursuant to Section 4.3.5;
    j. maintain privileges and the protections of confidentiality and classified information under the same standard as Judges and Courts pursuant to Section 1.1.8—except that the duty of confidentiality shall not prevent information from being used in a claim for compensation in connection with a prosecution, or in defense to a civil or criminal case for wrongdoing related to the prosecution; and
    k. except for statements that are necessary to inform the public of the nature and extent of the Prosecutor's action—and that serve a legitimate purpose—refrain from making extrajudicial comments that have a substantial likelihood of

heightening public condemnation of the accused, and exercise reasonable care to prevent employees, agents, or other persons assisting or associated with the Prosecutor in a criminal case from making an extrajudicial statement that the Prosecutor would be prohibited from making.

4. When the Prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that, in a case she prosecuted or assisted in prosecuting, a Defendant did not commit an offense of which he was convicted, the Prosecutor must—with appropriate protections of confidentiality under this Code or as otherwise provided by court order—promptly disclose that evidence to:
    a. the Defendant;
    b. the Court and/or Court Marshal; and
    c. any other Parties to the case.
5. Consistent with Section 1.4.2.2, a Prosecutor selected pursuant to Section 1.4.1.6 and 1.4.1.7 holds a special duty of notification and consultation to Parties (including Victims) that have standing to prosecute under Section 1.4.1.1.a through 1.4.1.1.c.

§ 1.4.4. Discontinuation of Prosecution

1. Consistent with Sections 2.1.2.2 and 4.2.4—and subject to the duty of notification and consultation under Sections 1.4.2.2 and 1.4.3.5, and the appointment of a new Prosecutor pursuant to this Article—a criminal case may be discontinued, with leave of the Court, at any time before a final adjudication order or judgment is delivered.
2. If a new Prosecutor is or will be selected pursuant to this Article, the discontinuing Prosecutor must ensure case continuity pursuant to the succession plan under Section 1.1.2.4.b, or as ordered by the Court, to effect a competent handover of duties to a replacement, including all relevant files and work product.

1.5. Defendants

§ 1.5.1. Rights of All Suspects, Defendants, and Others

1. All persons are presumed innocent until proven guilty in accordance with the law.
2. No person may be compelled to testify against himself or to confess guilt. No negative inferences may be derived from a person's failure to testify against himself or to confess guilt.
3. A suspect or an accused has the right to defend himself in person or through counsel, as detailed in Section 1.5.4.
4. All persons have the right to be free from:
    a. any form of coercion or duress, or threat thereof, unless authorized by this Code; and
    b. torture, threat of torture, or any other form of corporal, cruel, inhuman, or deadly punishment.

§ 1.5.2. Status of Person Charged

1. A suspect acquires the legal status of a criminal Defendant when the Complaint is served.
2. Notwithstanding Subsection 1, a person who is taken into custody, including a Detainee under Section 6.3.1.1—or is subjected to other coercive measures pursuant to Articles 2.2 through 2.4—shall be accorded the same rights and protections as Defendants.
3. All detained persons have the right to trial without undue delay or to be released.

§ 1.5.3. Rights of Defendants

1. A Defendant has the right to be informed promptly and in detail—in a language he understands—of the nature and cause of the charge against him. This includes the right to an interpreter if the Defendant cannot understand or speak the language used in Court.
2. A Defendant has the right to adequate time and, if detained, adequate facilities for the preparation of his defense.
3. All persons are entitled to fair and public proceedings.
    a. The press and the public may, only to the extent necessary, be excluded from all or part of a trial where:
        i. the interests of a person under 18 years of age so require;
        ii. the protection of the private lives of the Parties to the proceedings or witnesses so requires, such as in cases of sexual offenses; or
        iii. special circumstances are such that publicity would prejudice the interests of justice.
    b. Court judgments must be made public, except where the interests of a juvenile require otherwise.
4. A Defendant has the right to be tried in his presence, except as otherwise provided in Section 3.3.6.

5. The Defendant has the right to examine, or have examined, the witnesses and evidence offered against him—and to obtain by compulsory process the attendance and examination of witnesses and evidence on his behalf under the same condition as witnesses and evidence against him.
6. When a prosecution is for a violation of the same statutory provision and is based upon the same facts as a prior prosecution, it is barred by the Defendant's protection against double jeopardy if:
    a. the prior prosecution resulted in an acquittal that was not later set aside;
    b. the prior prosecution was terminated, after the Complaint was filed, by a final order or judgment in favor of the Defendant, which has not been set aside, reversed, or vacated, and that necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the present offense;
    c. the prior prosecution resulted in a conviction; or
    d. the prior prosecution was improperly terminated to the detriment of the Defendant.
7. When a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a prior prosecution in a court having jurisdiction over the subject matter of the present prosecution if:
    a. the prior prosecution resulted in either an acquittal that was not later set aside, or a conviction, and the present prosecution is for:
        i. any offense of which the Defendant could have been convicted in the prior prosecution; or
        ii. the same conduct, unless:
            1. the offense for which the Defendant is presently being prosecuted requires proof of a fact not required by the prior offense, and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or
            2. the presently prosecuted offense was not consummated when the prior trial began;
    b. the prior prosecution was terminated by an acquittal or by a final order or judgment for the Defendant that has not been set aside, reversed, or vacated, and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the present offense; or
    c. the prior prosecution was improperly terminated, and the present prosecution is for an offense of which the Defendant could have been convicted had the prior prosecution not been improperly terminated to the detriment of the Defendant.
8. When conduct constitutes an offense within the jurisdiction of Destiny and of another legal jurisdiction, a prosecution in one of those jurisdictions is a bar to the present prosecution in Destiny if:
    a. the prior prosecution resulted in either an acquittal that was not later set aside, or in a conviction, and the present prosecution is based on the same conduct—unless:
        i. the offense for which the Defendant is presently being prosecuted requires proof of a fact not required by the offense in the prior

prosecution, and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

ii. the presently prosecuted offense was not consummated when the prior trial began;

b. the prior prosecution was terminated, after criminally charging the Defendant with the relevant offense, by an acquittal or by a final order or judgment for the Defendant that has not been set aside, reversed, or vacated, and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the offense for which the Defendant is presently being prosecuted; or

c. the prior prosecution was improperly terminated, and the present prosecution is for an offense of which the Defendant could have been convicted had the prior prosecution not been improperly terminated.

9. A prosecution is not a bar within the meaning of Subsections 6 through 8 if:
    a. the prior prosecution was before a court that lacked jurisdiction over the Defendant or the offense;
    b. the prior prosecution was procured by the Defendant without the knowledge of the appropriate prosecuting officer and with intent to avoid the sentence that might otherwise be imposed;
    c. the prior prosecution was conducted in violation of Section 1.10.2; or
    d. the prior prosecution resulted in a judgment of conviction that was held invalid on appeal or in a later proceeding.
10. For purposes of this Section:
    a. An “acquittal” means a prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding that the Defendant is guilty of a lesser included offense constitutes an acquittal of the greater offense, even if the conviction is later set aside.
    b. A “conviction” means a prosecution resulted in:
        i. a judgment of conviction entered by a court, which has not been reversed or vacated;
        ii. a verdict of guilty, whether by a court or jury, that has not been set aside and is capable of supporting a judgment; or
        iii. a plea of guilty accepted by a court.
    c. A prosecution is “improperly terminated” if the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before the verdict or judgment. Termination under the following circumstances is not improper:
        i. the Defendant consents to the termination or waives, by motion to dismiss or otherwise, the right to object to the termination; or
        ii. the Trial Court declares a mistrial in accordance with law.

§ 1.5.4. Right to Counsel

1. A Defendant shall be entitled to be represented by a retained Attorney of his own choosing in any criminal case or criminal proceeding—including during any questioning, interviewing, or interrogation, and during pretrial proceedings.

   a. The right to be represented shall include the right to consult in private with an Attorney, or the Attorney's agent, as soon as feasible after a Defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation for it.
   b. The right of a suspect or an accused to communicate freely and confidentially with his Attorney must be respected at all stages of the criminal case or court proceedings.
2. Subject to Subsection 2.a and Section 1.3.3.3, any Attorney under Sections 1.1.3 and 1.3.2 who is chosen by the person charged, may act as Defense Counsel.
   a. The same person cannot act as Defense Counsel for two or more persons charged who have conflicting interests.
   b. If excused or removed, Defense Counsel must ensure continuity of representation—including maintaining privileges and protecting confidentiality and classified information pursuant to Sections 1.1.8, 1.3.4, 1.3.5, and 3.1.3, or as otherwise ordered by the Court—and must effect a competent handover of duties to their replacement, including all relevant files, or to the Defendant personally if a replacement has not been retained.
3. In addition to duties under Articles 1.1 and 1.3, Defense Counsel must act zealously within the bounds of the law to protect their client-Defendant's confidences and the unique liberty interests that are at stake in criminal prosecution. Among other things, Defense Counsel has:
   a. a duty of confidentiality regarding information relevant to the client's representation which duty continues after the representation ends;
   b. a duty of loyalty toward the client; and
   c. a duty of candor toward the Court and others, tempered by the duties of confidentiality and loyalty.
4. When the person charged is under 18 years of age or has a guardian for a reason other than age, the ward's guardian shall exercise rights on the ward's behalf. If such guardian cannot or will not look after the ward's interests in the case, the Court, on its own motion—or on the motion of a Party or Intervenor under Section 4.2.5—may appoint a guardian ad litem (for purposes of the case) to exercise rights on the ward's behalf.
5. If a Defendant appears without Defense Counsel at any proceeding after having been given a reasonable time to retain an Attorney, the cause shall proceed.

§ 1.5.5. Waiver of Right to Counsel

1. The right to counsel may be waived by a Defendant, except where he:
   a. is a juvenile; or
   b. displays signs of mental incapacity as defined in Section 1.5.8 and Article 4.4.
2. Before a person waives the right, the implications of waiving the right to counsel must be explained to the Defendant, and he must understand the consequences of waiving the right.
3. In Court, a person may waive the right to counsel on the record, after the Court has ascertained that he knowingly, intelligently, and voluntarily desires to forego that right. If the Defendant seeks to proceed in the trial of his case without the assistance of counsel, the Court must:
   a. make a thorough inquiry and be satisfied that the Defendant:

i. has been clearly advised of the right to the assistance of counsel;
ii. is capable of understanding the proceedings; and
iii. has made an intelligent and voluntary waiver of the right to counsel; and

b. take whatever measures may be reasonable and necessary to ensure a fair trial, consistent with Sections 3.3.4 through 3.3.9.

4. Outside of Court, a Defendant may waive the right to counsel in writing or in an audiovisual recording:
   a. containing an explanation of the implications of waiving the right and a declaration that the person understands the consequences of waiving the right; and
   b. if in writing, signed by the Defendant, and by the person to whom the waiver is made.
5. Waiver of the right to counsel by a Defendant does not preclude subsequent reassertion of that right. A Defendant may withdraw a waiver of the right to counsel at any time, but will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent retention of counsel.

§ 1.5.6. Waiver of Other Rights

1. Subject to the more specific provisions in this Code, a Defendant (or other person) may waive any right provided by law if the waiver involves the intentional relinquishment or abandonment of a known right.
   a. The waiver must be the product of a free and deliberate choice rather than intimidation, coercion, or deception.
   b. The Defendant (or other person) must have a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.
   c. The validity of a waiver is assessed under the totality of the circumstances, including the age, experience, intelligence, background, and physical and mental condition of the Defendant (or other person).
2. Subject to the more specific provisions in this Code, including the appellate standards of review in Section 5.2.7:
   a. The Prosecutor bears the burden of proving by a preponderance of the evidence that the Defendant’s waiver was voluntary, knowing, and intelligent.
   b. Waiver may be:
      i. proven by express written or oral statement of waiver by the Defendant (or other person); or
      ii. inferred from the Defendant's (or other person’s) conduct and understanding of the rights.

§ 1.5.7. Requirements upon Accusation

1. After receiving a Complaint and Summons pursuant to Sections 2.2.3 and 2.2.8, the Defendant is bound to attend proceedings as ordered by the Court.
2. Consistent with Sections 1.5.3.4 and 3.3.6, where the Defendant has been arrested or detained in custody, he shall be brought to every sitting of the Court as the Defendant would have been obliged to attend if he had been at liberty.

§ 1.5.8. Mentally Ill Defendants

1. A Defendant is guilty but mentally ill if:
    a. the Defendant committed the actus reus of the offense; and
    b. the Defendant acted under circumstances that would otherwise establish the necessary mens rea of the offense; but
    c. at the time of the act, the Defendant's mental illness or disorder is such that the Defendant:
        i. did not know the nature and quality of the act he was doing;
        ii. did not know that the act was wrong; or
        iii. lacked substantial capacity to choose whether to engage in or refrain from the act.
2. Pursuant to this Section and Article 4.4, a Defendant adjudicated to be guilty but mentally ill shall be sentenced under Section 6.1.15.

1.6. Victims

§ 1.6.1. Crime Victims

1. A “Victim” is any person who is the victim of an offense under the Code of Destiny, or has suffered physical harm or a violation of property rights, or a credible threat thereof, as the direct result of the commission or attempted commission of a criminal offense.
2. If deceased, incapacitated, or under 18 years of age, the Victim may be represented by the Victim’s estate, legal guardian, first-degree relative, or other lawful representative, as determined by the Court.
3. The status of a person as a Victim is not related to whether the perpetrator of the offense is identified, apprehended, prosecuted, or convicted, and is independent of any familial relationship with the perpetrator.

§ 1.6.2. Victims’ Rights Generally

1. Consistent with Section 1.1.3, Victims must be treated with respect and dignity by Officers of the Court.
2. The Courts of Destiny must, at all stages of criminal proceedings, consider the needs of the Victims, especially of minor children and other vulnerable populations, and Victims of criminal offenses involving sexual violence.
    a. The rights of Victims, or of their surviving relatives, shall be exercised by the respective guardians where Victims or surviving relatives are under 18 years of age or have been deprived of their legal capacity.
    b. If multiple guardians disagree among themselves on how the rights should be exercised, the Court shall appoint the most suitable guardian at its discretion consistent with Subsection 3.
3. If a person knows that an offense has been committed against a Victim who is under 18 years of age or who is otherwise subject to legal guardianship—and knows the respective guardian cannot or will not look after the ward’s interests in prosecuting the case—the person will not be held liable under Section 1.10.1 if he or she:
    a. promptly provides such information to a Court duly formed to try the offense committed against the Victim; or
    b. initiates review of the Victim’s guardianship pursuant to Section 5.3.1.1.c.

§ 1.6.3. Particular Rights of Crime Victims

1. When serving as a Prosecutor under Section 1.4.1, a Victim may exercise only those powers, rights, or privileges accorded to non-victim Prosecutors. In a case where the Victim is not serving as the Prosecutor, his or her rights include, but are not limited to, the provisions of this Section, which are enforceable by appropriate motion before the Court.
2. The Prosecutor in a criminal case must take into consideration the request of a Victim to undertake a specific investigation, collect certain evidence, or take specific measures related to the case. The Prosecutor may accept or reject the request of the Victim.
3. Upon a Victim’s reasonable request, the Court may allow the Victim—or the Victim’s Attorney under Subsection 6—to inspect, copy, or photograph records and physical

evidence available to the Court or to the Prosecutor, if the Victim has a legitimate interest in doing so.

4. All Victims shall be notified of all significant steps during the criminal proceedings.
    a. The first time Victims or surviving relatives are interviewed or examined, the Prosecutor shall inform them of their rights in the case.
    b. The Prosecutor shall inform the Victims about the development of the case and progress made, unless the investigation or other reasons make it inadvisable.
5. All Victims shall be entitled to be present at all court proceedings, unless explicitly provided for otherwise in this Code.
    a. Subject to a duty of confidentiality, all Victims are also entitled to be present at court proceedings held behind closed doors and when witness testimony is to be given behind closed doors with just the Parties present, unless explicitly provided for otherwise in this Code.
    b. Where the number of Victims is such that their presence in court would entail unreasonable expenses or would require premises that are otherwise unsuitable, the Court may decide that the Victims shall participate only via electronic audiovisual means.
    c. Before a decision on participation is made under this Subsection, the Victims and surviving relatives, or their representatives, and Defense Counsel shall be given an opportunity to express their views.
6. Any Victim has the right to counsel of a retained Attorney.
    a. Counsel for the Victim shall protect the interests of the Victim and surviving relatives in connection with the investigation and the further proceedings of the case, and shall be informed of and included in all steps taken. Counsel for the Victim or surviving relatives may only exercise the rights that the Victim or surviving relatives themselves possess.
    b. Counsel for the Victim, and anyone performing services for such Attorney, shall prevent others from gaining access to or knowledge of what is divulged in criminal cases concerning an individual's personal affairs—or technical devices and procedures, as well as operational or business matters that are, for competitive reasons, important to keep secret in the interests of the person whom the information concerns. This duty of secrecy does not preclude the use of such information to the extent necessary to protect the client's interests in the case.
7. Upon timely request of the Victim, the Court shall allow the Victim:
    a. if otherwise consistent with fair and orderly proceedings and the requirements of this Code:
        i. to supply evidence in pre-trial and trial proceedings; and
        ii. to present questions to witnesses, directly or through an Attorney; and
    b. to make a victim impact statement in the course of sentencing proceedings.

1.7. Enforcement Agents

§ 1.7.1. Enforcement Agents

1. The Enforcement Agents of Destiny are:
    a. in the case of legal persons, Enforcement Agencies:
        i. Warrant Agencies;
        ii. Court Marshal Agencies; and
        iii. Corrections Agencies; and
    b. in the case of natural persons, Enforcement Agents:
        i. Warrant Agents, which shall include Senior Warrant Agents;
        ii. Court Marshals, which shall include Senior Court Marshals; and
        iii. Corrections Agents, which shall include Senior Corrections Agents.
2. The purpose of Warrant Agencies and Agents is the proper execution of Warrants and other coercive measures under Articles 2.2 through 2.4 issued by a Complaint Judge appointed pursuant to Section 2.1.1.
    a. The activities under this Subsection may only be executed by Warrant Agents employed by a Warrant Agency.
    b. Warrant Agents may not execute Warrants or coercive measures that are manifestly unlawful, or known by the relevant Warrant Agent to be unlawful.
    c. Any Warrant execution must be overseen by at least one Senior Warrant Agent, who shall be physically present throughout the execution process.
3. The purpose of Court Marshal Agencies and Agents is:
    a. to properly execute Warrants and any related coercive measures under Articles 2.2 through 2.4 issued by a Court pursuant to Section 2.2.8—and to properly effect service of process and enforce all orders of the Court—unless the Warrant or court order is manifestly unlawful or known by the relevant Court Marshal to be unlawful;
    b. to properly secure and retain evidence received by the Court;
    c. to attend court sessions and perform the duties of bailiff, including providing courtroom security, maintaining order, and performing such other necessary duties as the Court may direct;
    d. at the discretion of the Court and in the interests of justice, to provide for the personal protection of Judges, court staff, witnesses, and other threatened persons, where criminal intimidation impedes the functioning of the judicial process or any criminal proceeding;
    e. to monitor the Parties' compliance with a judgment and any sentence pursuant to Chapter 6, including:
        i. the implementation or observance of specific terms imposed by the Court;
        ii. the conditions of confinement or other custodial sanctions; and
        iii. any correctional violations, or violations of probation or post-release supervision; and
    f. to ensure:
        i. the activities in this Subsection are only performed by Court Marshals employed by a Court Marshal Agency; and

ii. the execution of any Warrant or court order is overseen by at least one Senior Court Marshal, who shall be physically present throughout the execution process.

4. The purpose of Corrections Agencies and Agents is:
    a. to receive persons taken into custody by a lawful Warrant, court order, or judgment and sentence;
    b. to detain them under the standards of Article 6.3 and consistent with CoD Chapter 1;
    c. to comply with a Warrant or court order, unless it is manifestly unlawful or known by the relevant Corrections Agent to be unlawful; and
    d. to ensure that activities under this Subsection are only performed by Corrections Agents employed by a Corrections Agency, with at least one Senior Corrections Agent physically present at an active correctional facility at all times.

§ 1.7.2. Agencies and Agents

1. For a legal person to qualify as an Enforcement Agency, the directors or trustees must publicly record and maintain at all times the following information on an Authoritative Criminal Registry, which they swear under penalty of perjury to be correct:
    a. the identity of every officer and shareholder of the legal person, of which at least two officers must meet the qualifications in Subsection 3;
    b. the identity of every Enforcement Agent to be employed and a statement outlining their qualifications and ongoing training, and the sufficiency of such relative to prevailing international norms;
    c. a statement that the person maintains appropriate insurance against civil and criminal liabilities reasonably risked in the execution of its duties, secured by a primary lien on at least 10,000 square meters of Surface Real Property, with thorough details of the coverage provided; and
    d. a statement from a panel of Neutrals appointed pursuant to Section 1.9.1 that it has validated the accuracy, completeness, and reasonable sufficiency of the details in Subsections 1.a. through 1.c., and further finds that:
        i. the listed officers, shareholders, and employees are of good character and sound mind; and
        ii. the operation of the Enforcement Agency is reasonably expected to comply with the requirements of Subsection 5, Section 1.7.3, and all other applicable requirements under this Code—and it does not represent a danger to the proper administration of justice.
2. Any statement made under Subsection 1.d shall only be effective for 12 months. If a panel of Neutrals declines to issue a statement pursuant to that Subsection:
    a. if the person is not currently registered as an Enforcement Agency, the person may not attempt another registration within six months; or
    b. if the person is currently registered as an Enforcement Agency, they must cease operations immediately upon exhaustion of the right to appeal, if any, and may not attempt another registration for six months from the date of ceasing operations.
3. A Senior Enforcement Agent is an Enforcement Agent who:
    a. is at least 25 years of age; and

   b. has at least five years of relevant experience:
      i. for Warrant Agencies, in criminal investigations—including applying for and executing judicial warrants; conducting arrests, searches and seizures, and other coercive measures; transporting and detaining arrestees; and gathering and preserving evidence;
      ii. for Court Marshal Agencies, in or with court systems—including experience in law enforcement, probation, and parole; and experience in protection of judges, court staff, victims, witnesses, and other participants; or
      iii. for Corrections Agencies, in the general management of institutions responsible for the receipt and detention of persons taken into custody—including pre-trial detainees and prisoners subject to security measures or corrective measures by court order.
4. An Enforcement Agent and his or her Enforcement Agency will be jointly and severally liable for any claim brought against the Enforcement Agent for actions taken in the course of the Agent's duties, and no promise to the contrary shall be enforceable under the Code of Destiny.
5. The differentiation of Enforcement Agents by role is for the purpose of providing checks and balances in criminal procedure generally, and in the execution of the law in particular.
   a. No person may at any one time qualify to be more than one of the types of Enforcement Agents listed in Section 1.7.1.1; and:
      i. a Warrant Agency may not employ Court Marshals or Corrections Agents;
      ii. a Court Marshal Agency may not employ Warrant Agents or Corrections Agents; and
      iii. a Corrections Agency may not employ Warrant Agents or Court Marshals.
   b. Enforcement Agencies must make all reasonable efforts to maintain independence from Agencies of other types.
   c. Where a Court is required to appoint an Agency under this Code, it shall take reasonable steps to ensure that the Agency is independent of others that have been involved in the same case.

§ 1.7.3. Enforcement Agent Standards

1. In addition to more specific provisions in this Code, Enforcement Agents are required:
   a. to exercise their authority:
      i. in a fair and impartial manner, through behaviors that convey neutrality, fairness, and trustworthy motives;
      ii. in a way that reduces the risk of injury to both Agents and members of the public—as well as other attendant or incidental harms—to the extent feasible; and
      iii. so as to avoid unnecessary intrusions on individual privacy, autonomy, and dignity;
   b. to respect and protect the rights of everyone in Destiny, including those suspected, accused, or convicted of crimes;

c. to treat individuals with dignity and respect, such as explaining the basis for an Agent's actions and giving individuals an opportunity to speak and be heard; and
d. to be truthful, transparent, and accountable—both within the context of a criminal case or proceeding, and with the public in general—consistent with any duty of confidentiality.

2. All activity by Enforcement Agents pursuant to a Warrant or court order must be in furtherance of a legitimate objective of the Warrant or court order.
    a. Agents should not engage in pretextual enforcement, meaning taking an action for which they lack authority or justification—which is the action's principal motivation—by relying instead on another reason for which they do have authority or justification, even though they would not have taken the action but for the principal motivation.
    b. Enforcement Agent activities should not be based on a person's:
        i. attributes protected under CoD Chapter 1, unless these characteristics are part of a sufficiently specific suspect description; or
        ii. expressed or perceived belief, absent a plausible basis to conclude that the person is advocating conduct that poses a threat to public safety.
3. Except as otherwise expressly authorized in this Code, Enforcement Agents shall ensure that they, their duty vehicles, and their remote or autonomous devices:
    a. do not identify or label themselves as "police";
    b. display appropriate and clear insignia indicating that the coercive measures are taken under the auspices of an Enforcement Agent, and providing personal identifying information for individual Enforcement Agents; and
    c. operate situational cameras during Warrant executions, and preserve the recordings for the applicable statute of limitations.
4. Enforcement Agencies should ensure that their Agents, other employees, and subcontractors adhere to the standards in this Section through:
    a. clear and publicly accessible written rules, policies, and procedures on issues that meaningfully affect the rights and interests of people in Destiny—including the training, risk tolerances, and oversight necessary to the appropriate use, if applicable, of:
        i. arms;
        ii. informants pursuant to Subsection 7; and
        iii. intrusive surveillance methods pursuant to Section 2.2.7;
    b. appropriate recordkeeping and data collection and analysis, which records shall be kept for the relevant time limitations;
    c. high standards in employee recruitment, hiring, training, equipment, technology, resources, support, supervision, incentives, documentation, reporting, auditing, evaluation, accountability, incident review, corrective action, and firing; and
    d. annual independent accreditation pursuant to prevailing international standards and best practices for law enforcement agencies.
5. In addition to the requirements elsewhere in this Code, Enforcement Agencies must have in place a plan of succession to maintain continuity in criminal cases—including execution of Warrants and other coercive measures; enforcement of court orders and judgments; compliance with the terms and conditions of sentencing (including humane custodial treatment and correctional violations); and engagement with any collateral

proceedings. If replaced, an Agency must effect a competent handover of duties to their replacement, including all relevant files.

6. Enforcement Agents having custody of persons shall keep an accurate list of the names of all persons in their custody, the grounds upon which they are being held, and the date they were most recently taken into custody.
7. Warrant Agencies that use informants—meaning individuals who provide information to Agents under an expectation of a benefit not available to ordinary witnesses—shall ensure that informants:
    a. are at least 18 years of age;
    b. are aware of the risks involved;
    c. have access to legal counsel;
    d. are handled by a Senior Warrant Agent;
    e. undergo a documented vetting process considering, among other things, criminal record, mental-health or substance-abuse issues, reliability of prior information, and potential risks to public safety; and
    f. are not used in cases where the inducement constitutes a reward for criminal conduct under this Code.
8. Enforcement Agents are required, where a matter may reasonably affect law and order, to provide reasonable information and cooperation to other agencies of Destiny and to external law-enforcement, regulatory, and supervisory authorities, consistent with any duty of confidentiality and the rights protected under CoD Chapter 1.

1.8. Registry

§ 1.8.1. Authoritative Criminal Registries

1. An Authoritative Registry under CoD Article 4.5 that records information required by this Code shall be an "Authoritative Criminal Registry"—and the Authoritative Registrar for such a Registry shall be an "Authoritative Criminal Registrar." References in this Code to a Registry or Registrar shall be construed accordingly unless context requires otherwise.
2. In addition to the requirements to qualify as an Authoritative Registry under CoD Article 4.5, an Authoritative Criminal Registry must:
    a. maintain privileges and the protections of confidentiality and classified information under the same standard as Judges and Courts pursuant to Section 1.1.8—except that the duty of confidentiality shall not prevent information from being used in a claim for compensation concerning the Registry, or in defense to a civil or criminal case for wrongdoing involving the Registry;
    b. follow robust methods to restrict access to information sealed or otherwise restricted by Sections 1.8.2 and 3.1.3—or that is restricted elsewhere in this Code—to those with a lawful basis to access it; and
    c. provide mechanisms for establishing the truth of a fact on a Registry without disclosing associated confidential facts.
3. In addition to the requirements to qualify as an Authoritative Registrar under CoD Article 4.5, an Authoritative Criminal Registrar must be a legal person and:
    a. publicly identify every officer and shareholder of the legal person, of which at least two officers must be Attorneys under this Code;
    b. have in place a plan of succession to maintain the duties owed under this Code, to ensure legal continuity in criminal cases, and, as necessary, to effect a competent handover of its duties to a replacement—including all relevant files and documents—while ensuring the maintenance of any confidentiality;
    c. maintain appropriate insurance against civil and criminal liabilities reasonably risked in the execution of its duties, secured by a primary lien on at least 10,000 square meters of Surface Real Property; and
    d. provide a signed statement from a panel of Neutrals, appointed pursuant to the procedure in Section 1.9.1, stating that it:
        i. believes the Registry is compliant with the requirements of Subsection 2 and CoD Article 4.5;
        ii. has validated the Registrar's compliance with the requirements in Subsections 3.a through 3.c; and
        iii. further attests that the Registrar's ultimate owners and commercial leadership are at least 18 years of age, of good character and sound mind, and in possession of a Conduct Agreement under CoD Article 3.4.
4. Any statement made under Subsection 3.d shall only be effective for 12 months. If a panel of Neutrals declines to issue a statement pursuant to that Subsection:
    a. if the person is not currently registered as an Authoritative Criminal Registrar, the person may not attempt another registration within six months; or
    b. if the person is currently registered as an Authoritative Criminal Registrar, they must cease operations immediately upon exhaustion of the right to appeal, if

any, and may not attempt another registration for six months from the date of ceasing operations.

§ 1.8.2. Records

1. The relevant Party must submit to the Registry, and the Registry must record, any artifact of criminal procedure required by this Code, respecting the confidentiality of such documents pursuant to Section 3.1.3, including:
    a. information that shall be public under Section 3.1.3 unless specifically ordered otherwise by this Code or a Court, including:
        i. the registration of Officers of the Court;
        ii. the appointment and decisions of a Court or Judge, except for a Complaint Judge;
        iii. the posting of a notice of referral for consideration for potential prosecution pursuant to Section 1.10.1.1.b.iii;
        iv. a case and case record after a Trial Court is established;
        v. court calendars, scheduling, and venues;
        vi. records of court proceedings not listed in Subsection 1.b;
        vii. metadata or statistics collated on court activities;
        viii. orders and decisions, including judgment and any sentence; and
        ix. any other artifact of criminal procedure required by the Code that a person might reasonably rely upon in the exercise of their rights not listed in Subsection 1.b;
    b. information which shall be Confidential pursuant to Section 3.1.3 unless specifically ordered otherwise by this Code or a Court, including:
        i. the docketing of a case and the posting of notice of intent to prosecute pursuant to Sections 1.4.2.2 and 2.1.1.3.a—along with any associated case record—unless and until the establishment of the Trial Court and its creation, receipt, and maintenance of the case record under Section 3.1.2;
        ii. records of court proceedings in camera;
        iii. records of court proceedings concerning juveniles and Victims, including sentencing pursuant to Section 6.1.14 and victim-offender mediation pursuant to Section 6.2.6;
        iv. mental health reports pursuant to Article 4.4 or Section 6.1.15;
        v. the appointment and decisions of a Complaint Judge;
        vi. the issuance of a coercive measure unless and until that coercive measure has been fully executed;
        vii. detainee records pursuant to Section 6.3.4.2;
        viii. submissions of evidence;
        ix. records of arms;
        x. Property Owner records pursuant to Section 1.9.1; and
        xi. any other artifact of criminal procedure required by the Code that:
            1. might reasonably be relied upon by a person in the exercise of their rights; and
            2. may prejudice the safety or security of an Officer of the Court, Party, witness, Victim, or evidence, by revealing current locations or security arrangements;

c. information which shall be kept under seal or secret pursuant to Section 3.1.3, which is subject to expedited in camera review by the Court to confirm that there is a prima facie case—sufficient to establish a factual and legal basis unless rebutted or disproved—for the sealing or secrecy of the information.
    i. Upon confirmation, the Court shall set the matter for a plenary proceeding on classification under Subsection 3.
    ii. If the information is deemed to be ineligible for the proposed classification, the Party seeking the information's introduction may:
        1. proceed with the information under the level of classification deemed appropriate by the Court;
        2. withdraw the proposed information in its entirety without public revelation of the information or its existence; or
        3. seek appellate review of the information's classification for purposes of confidentiality and related issues, pursuant to Article 5.2.

2. Where Subsection 1 lists an action or document, any confidentiality of the action or document—whether temporary or permanent—includes its existence and contents, unless expressly specified to the contrary.
3. A plenary proceeding on the classification of information shall be held:
    a. in cases under Subsection 1.c.i;
    b. if a Party challenges the information's level of confidentiality under Section 3.1.3, or its treatment under Subsection 1.a or 1.b;
    c. as appropriate, to determine whether specific details should be redacted:
        i. for purposes of confidentiality, privacy, or safety;
        ii. so as to allow the information (with redactions) to be made public, unsealed, or rendered non-secret; or
        iii. pursuant to court order; and
    d. as necessary, in closed hearings with procedures appropriate for classified information.
4. Records shall include at minimum:
    a. the person or Court that recorded the information;
    b. when it was recorded;
    c. what steps were taken to validate its authenticity; and
    d. in the case of physical evidence or information to be stored:
        i. indices, descriptions, photographs, or other appropriate data necessary for a user of the Registry to understand the nature and quantity of the evidence or information stored;
        ii. the location of the storage; and
        iii. the Enforcement Agent responsible for the security of the storage.
5. An Authoritative Criminal Registry may reject the submission of a record if it is incomprehensible or does not contain everything necessary for it to be recorded—in which case, the Registry shall give the submitter a clear, written explanation of the rejection within 48 hours, including, if reasonably possible, recommendations on how to make the submission admissible.

1.9. Neutrals

§ 1.9.1. Appointment of Neutrals

1. Each Property Owner shall have recorded on an Authoritative Criminal Registry:
    a. information identifying the person, and all the Surface Real Property that qualifies the person as a Property Owner; and
    b. information identifying one objective and independent expert ("Neutral") for every 50,000 square meters or part thereof of Surface Real Property that qualifies the person as a Property Owner.
2. A Property Owner may:
    a. revoke his or her Neutral's authority and identify a new Neutral at any time, for any reason, and no promise to the contrary shall be enforceable under the Code of Destiny; and
    b. if a natural person, serve as his or her own Neutral with regard to the first 50,000 square meters of Surface Real Property that qualifies him or her as a Property Owner.
3. A Neutral may represent more than one Property Owner, provided that the total Surface Real Property qualifying all such persons as Property Owners does not exceed 50,000 square meters.

§ 1.9.2. Summoning a Panel of Neutrals

1. When required by this Code to summon a panel of Neutrals, a person shall have three (3) unique prospective Neutrals randomly drawn from an Authoritative Criminal Registry in a documented and verifiably random manner.
2. The summoner must confide to prospective Neutrals only those facts necessary and sufficient to allow them to assess their eligibility and qualifications to serve. A Neutral may breach the confidentiality of such facts only to disclose misconduct by the summoner, a Party, an Officer of the Court, or another Neutral, or as required by any other provision of law.
3. Any prospective Neutral must immediately give notice of recusal and withdraw from the action if the Neutral is a Party to the action, is recorded on the Authoritative Criminal Registry by a Party to the action, has a significant financial or personal connection with a Party, or has any other direct interest in the outcome of the matter.
4. If any two or more prospective Neutrals have significant or personal connections with one another, all but the one first drawn from the Authoritative Criminal Registry must immediately give notice of recusal and withdraw from the action.
5. The summoner shall replace any recusing Neutral with another Neutral chosen by the same means used to choose the recusing Neutral.
6. Once three eligible Neutrals agree to serve in the decision-making process, they shall together constitute a panel of Neutrals with the privilege, power, and duty to make the decision assigned to them.

§ 1.9.3. Duties, Decisions, and Rights of Neutrals

1. A panel of Neutrals is summoned and empowered to review compliance with this Code, when a non-judicial attestation of compliance is required.

2. Each Neutral must exercise independent and informed judgment and may make any reasonable inquiry or inspection necessary to do so. Failure to respond to a Neutral's inquiry or inspection request pursuant to this Subsection shall be taken into consideration in determining whether to approve or reject the application.
3. The panel shall approve the application if, and only if, it determines by majority vote that the applicant has satisfied the requirements of the relevant code section.
4. A panel of Neutrals shall decide in a timely manner all matters before it and give applicants reasonable time to respond to requests for additional information.
5. The panel shall decide its position by majority vote and the Neutrals in the majority must attest under oath or affirmation the reasons for their decision.
6. If a Neutral becomes unavailable or withdraws after empanelment, the summoner shall replace that Neutral pursuant to the same procedure by which they were appointed, and the applicable time frame under Subsection 4 shall restart upon the replacement's acceptance.
7. A unanimous decision of the panel is final and non-appealable. A non-unanimous decision is subject to appeal in a Civil Court pursuant to CoD 6.2.2.4.
8. The reasonable costs of the Neutrals shall be paid by the summoner.

1.10. Procedural Protections

§ 1.10.1. Duty to Report

1. A person commits an offense if he or she:
    a. has unprivileged knowledge of the actual or attempted commission of a felony; and
    b. fails to make reasonable efforts to report as soon as possible to:
        i. any identifiable victim of the felony; or if not practicable,
        ii. the Property Owner on whose property the felony was committed; or if not practicable,
        iii. any Officer of the Court, who must report any credible allegations of a felony offense to an Authoritative Criminal Registry to post for potential prosecution pursuant to Section 1.8.2.1.a.iii.
2. A person commits an offense if he or she finds a human corpse and fails to make reasonable efforts to report as soon as possible to:
    a. any identifiable next of kin;
    b. the Property Owner on whose property the corpse was discovered; or
    c. a reputable provider of mortuary services.
3. A person need not comply with this Section if:
    a. compliance would place him or her in danger;
    b. compliance would interfere with the person's duty to protect the health or safety of another;
    c. the person knows the felony or corpse has already been reported—or is presently being reported—to the appropriate parties by another person; or
    d. the person has complied with Section 1.6.2.3.
4. The offense is:
    a. if the witnessed offence is one for which the prescribed maximum term of imprisonment is not less than 20 years, or the person is acting as an Officer of the Court, liable on conviction to a fine not exceeding XCD 25,000 or to imprisonment for a term not exceeding 12 months, or to both; or
    b. in all other cases, liable on conviction to a fine not exceeding XCD 10,000.

§ 1.10.2. Wrongful Prosecution

1. A person other than the Director of Public Prosecutions commits an offense if he or she:
    a. initiates, procures, or continues a criminal proceeding under this Code against another person:
        i. without probable cause to believe that the person prosecuted is guilty of the offense charged; and
        ii. primarily for a purpose other than bringing an offender to justice;
    b. attempts to initiate, procure, or continue a criminal proceeding outside of this Code; or
    c. while prosecuting another person, reduces the rigor of that prosecution pursuant to an agreement to punish criminal wrongdoing less than required by this Code.
2. Any party wrongfully arrested, prosecuted, or punished shall enjoy all civil and criminal rights and remedies afforded under the Code of Destiny.

3. The offense is:
    a. under Subsection 1.b, liable on conviction to a fine not exceeding XCD 75,000 or to imprisonment for a term not exceeding 5 years, or to both;
    b. if the wrongful prosecution was for a felony, liable on conviction to a fine not exceeding XCD 50,000 or to imprisonment for a term not exceeding 3 years, or to both; or
    c. if the wrongful prosecution was for a misdemeanor, liable on conviction to a fine not exceeding XCD 25,000 or to imprisonment for a term not exceeding 12 months, or to both.

§ 1.10.3. Zone Trespass

1. A person commits an offense if he or she:
    a. enters or remains in the Area and:
        i. does not possess a Conduct Agreement under CoD Article 3.4; or
        ii. knowingly carries into the Area a dangerous communicable human disease while failing to take reasonable means to prevent its transmission;
    b. knowingly abuses a position of authority in a port facility or perimeter control service to admit another person to the Area in violation of Subsection 1.a; or
    c. negligently admits another person to the Area in violation of Subsection 1.a.
2. It is a defense under Subsection 1.a that the person:
    a. is not in control of their presence in the Area as a result of emergency or detention pursuant to this Code; or
    b. leaves the Area promptly upon being warned they are in violation of this Section.
3. A person guilty of the offense in Subsection 1.b or 1.c shall bear joint and several liability for the costs of any tort or criminal offenses committed within the Area by the person they unlawfully admitted.
4. The offense is:
    a. under Subsection 1.b, liable on conviction to a fine not exceeding XCD 125,000 or to imprisonment for a term not exceeding 3 years, or to both; or
    b. in all other cases, liable on conviction to a fine not exceeding XCD 25,000 or to imprisonment for a term not exceeding 12 months, or to both, but a Defendant convicted under Subsection 1.a shall suffer only liability for the costs of prosecution and exclusion from the Area pursuant to Section 6.1.13.

2. Cases and Investigations

2.1. Case Commencement

§ 2.1.1. Criminal Cases

1. To initiate a criminal case, a Prosecutor qualified under Section 1.4.1 must:
    a. sign under oath or affirmation a Complaint pursuant to Section 2.1.2;
    b. request that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2 to serve as the Complaint Judge; and
    c. submit the Complaint and any supporting materials to the Judge so appointed.
2. Consistent with Section 3.1.4.3.c.ii, the Judge appointed under Subsection 1 shall review the Complaint and any supporting materials to determine whether the requirements of Section 2.1.2 have been met—with a rebuttable presumption against approving a Complaint that had been previously dismissed under Subsection 2.a, and that is brought by, or on behalf of, the same person pursuant to Section 1.4.1—and then:
    a. dismiss the Complaint;
    b. provisionally dismiss the Complaint, with leave to amend under Section 2.1.2.2.a, and to resubmit promptly for consideration under this Subsection; or
    c. issue as required:
        i. a Summons pursuant to Sections 2.2.3 and 2.2.8, or an arrest Warrant pursuant to Sections 2.2.2 and 2.2.8; and
        ii. if appropriate, a Subpoena pursuant to Sections 2.2.3 and 2.2.8, or a search Warrant pursuant to Sections 2.2.2, 2.2.8, and 2.4.5; and
    d. in any event, terminate the appointment under Subsection 1.
3. Upon issuance of any coercive measure pursuant to Subsection 2.c, the Prosecutor must:
    a. docket a case and post notice of intent to prosecute with an Authoritative Criminal Registry under Section 1.8.2.1.b, and make any necessary notifications pursuant to Section 1.4.2.2; and
    b. request that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2 to serve as the Trial Court for purposes of criminal proceedings pursuant to Articles 3.1 through 5.1.
4. Upon service of a Summons, execution of an arrest Warrant, or an arrest without a Warrant, the case shall proceed to an initial appearance and arraignment under Sections 4.1.1 and 4.1.2—and, as appropriate, a detention hearing and related proceedings pursuant to Sections 4.1.3 through 4.1.7.
5. The computation of any period of time prescribed or allowed by this Code—or any enlargement or extension thereof—shall be pursuant to Section 3.1.7.

§ 2.1.2. Complaint

1. The Complaint upon which the Defendant is to be tried must be a plain, concise, and definite written statement of the essential facts and circumstances establishing

probable cause to believe that each charged offense has been committed and that the named Defendant or Defendants committed the offense or offenses.

a. Formal or technical terms are not necessary in a Complaint, so long as the offense can be substantially described without such words, and the Complaint fully notifies the Defendant of:
    i. the nature and cause of an accusation; and
    ii. the consequences upon conviction of the charged offense.
b. Criminal charges within a Complaint shall be organized into one or more counts—each of which must allege one or more offenses in violation of the Code of Destiny—so that each count is a separate and distinct charge for purposes of trial and sentencing, subject to Sections 2.1.3 and 6.1.4.
    i. Specification of an offense in a Complaint shall constitute a charge of that offense and any lesser included offenses, so long as the evidence at trial is such that the Court could rationally find the Defendant guilty of the lesser offense yet acquit him of the greater charged offense.
    ii. A Complaint may incorporate by reference facts alleged in another count. Allegations of fact may be in the alternative. The Court, on its own motion or that of the Defendant, may disregard unnecessary allegations as surplusage.
c. A Complaint shall include:
    i. the name of the accused Defendant;
    ii. if known, the Defendant's current residence address—and if different, his current mailing address;
    iii. the date on which the Complaint was filed;
    iv. a statement that the prosecution is brought under the authority of law;
    v. for each count, the citation to the section of law that the Defendant is alleged to have violated, and the maximum penalty that may be imposed upon conviction;
    vi. as particularly as possible, the time and place of the Defendant's alleged commission of the offense;
    vii. notice of any prior attempts to initiate proceedings pursuant to Section 2.1.1—as well as any application for court order pursuant to Section 2.2.7—involving the same or similar allegations against the same person or other persons who could have been joined pursuant to Section 2.1.3, accompanied by any submissions, evidence, and rulings in the prior proceedings; and
    viii. the signature of the Prosecutor.

2. Subject to Article 1.4—including the duties under Sections 1.4.2 through 1.4.4, especially the charging requirements of Section 1.4.3.3.d through 1.4.3.3.f and the special duty of notification and consultation pursuant to Sections 1.4.2.2 and 1.4.3.5—the Prosecutor:
    a. prior to the commencement of court proceedings under Section 3.1.1:
        i. may amend the Complaint to allege—or to change the allegations regarding—any offense arising out of the same alleged conduct of the Defendant that gave rise to any offense alleged in the original Complaint; or

ii. may dismiss the Complaint or any count thereof without prejudice by filing a reasoned notice of the dismissal with the Court, and each Defendant consistent with Article 3.2; or

b. after the commencement of court proceedings under Section 3.1.1, may only amend or dismiss the Complaint pursuant to Section 4.2.4.

§ 2.1.3. Joinder of Defendants and Offenses

1. Subject to relief under Section 4.2.7, the Complaint may charge:
    a. a Defendant in separate counts with two or more offenses if the offenses charged are:
        i. of the same or similar character;
        ii. based on the same act or transaction; or
        iii. connected with or constitute parts of a common scheme or plan; and
    b. two or more Defendants if they are alleged to have participated in the same act or transaction—or in the same series of acts or transactions—constituting an offense or offenses.
2. Under Subsection 1.b:
    a. the Defendants may be charged in one or more counts together or separately; and
    b. all Defendants need not be charged in each count.
3. Where two or more offenses are properly charged in separate counts of a single Complaint, all such charges may be tried in a single proceeding—but the Court shall return a separate judgment for each count of a Complaint under Subsection 1.
4. When a Defendant is convicted of two or more offenses charged in separate counts of a Complaint, the Court shall impose separate sentences for each such conviction—but this Section does not prohibit the exercise of the Court's:
    a. authority to suspend either the imposition or the execution of any such sentences; or
    b. discretion to impose such sentences to run either concurrently with or consecutively to each other—or to any other sentence or sentences previously imposed upon the Defendant.

§ 2.1.4. Case De-confliction

1. Where two or more Warrants or court orders have been issued for the arrest or detention of the same person pursuant to Sections 2.2.2 and 2.2.8—or for the seizure of the same property pursuant to Sections 2.2.2, 2.2.8, and 2.4.5:
    a. among arrest Warrants, the Warrant issued earlier in time shall take precedence;
    b. among search Warrants, the Warrant issued earlier in time shall take precedence;
    c. an arrest Warrant shall take precedence over a search Warrant;
    d. a Warrant or court order issued pursuant to Section 2.2.8 shall take precedence over a Warrant or other coercive measure issued by a Complaint Judge; and
    e. among court orders, an order issued earlier in time shall take precedence—except that an order concerning a felony charge shall take precedence over an order concerning a misdemeanor charge.

2. In cases where precedence among court orders and Warrants is established under Subsection 1:
    a. an arrested or detained person shall be made available:
        i. to receive any service of process and to comply with any Warrant or coercive measure issued pursuant to Sections 2.2.2, 2.2.3, 2.2.8, and 2.4.5;
        ii. for investigatory coercive measures issued pursuant to Sections 2.2.8 and 2.3.5 through 2.3.7; and
        iii. for proceedings under Chapters 3 through 5, and Articles 6.2 and 6.3; and
    b. seized property shall be made available:
        i. to inspect, copy, or photograph records and physical evidence;
        ii. to take specific measures consistent with Section 2.4.6; and
        iii. for proceedings under Chapters 3 through 5, and Articles 6.2 and 6.3.

§ 2.1.5. Case Consolidation

1. After a Court has been formed pursuant to Section 2.1.1.3.b, in cases where sets of materially overlapping circumstances result in separate prosecutions involving offenses or Defendants that could have been joined in a single Complaint pursuant to Section 2.1.3, the Court—on motion of any Party or Intervenor under Section 4.2.5, or upon request of another Court formed pursuant to Section 2.1.1.3.b—must convene and/or participate in a meeting among the Judges of the separate cases to decide whether the cases should be consolidated before a single Court.
    a. Where multiple Courts move to convene under this Section, the Court formed first in time shall have precedence in serving as the convening Court.
    b. The convening Court must make reasonable efforts to ascertain whether additional cases or Complaints exist, or are likely to exist, which could be joined in a single Complaint under this Section—and as appropriate, must provide the Parties to such additional cases or Complaints notice of proceedings under this Section.
    c. The decision shall not be made without first providing notice and an opportunity to be heard by the Defendant or Defendants, and any interested Victims under Section 1.4.1.1.a through 1.4.1.1.c and Article 1.6.
    d. Where the Judges are unable to reach a unanimous decision on consolidation, the convening Court shall request that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2 to determine:
        i. whether the cases should be consolidated; and, if so,
        ii. which Judge shall serve as the Court for purposes of criminal proceedings pursuant to Chapters 3 and 4, and Articles 5.1, 6.1, and 6.2.
    e. A Party may seek review of the decision by interlocutory appeal under Section 5.2.3.
2. If the cases are consolidated, proceedings thereafter shall be under a single superseding Complaint brought by a single Prosecutor—selected as necessary pursuant to Section 1.4.1.7—before a single Court constituted pursuant to Subsection 1.

a. Such proceedings shall be the same as if initially brought under a single Complaint by a single Prosecutor.
b. In addition to the requirements of Section 1.4.3.3.e, the Prosecutor must charge as many offenses as required to fully encompass the criminal conduct of the Defendant, or the Defendants, in relation to each of the separate prosecutions.

2.2. Coercive Measures

§ 2.2.1. Coercive Measures

1. Coercive measures include the execution of:
    a. arrests without a Warrant pursuant to Section 2.3.1;
    b. arrest Warrants pursuant to Sections 2.2.2, 2.2.8, and 2.3.2 through 2.3.4;
    c. Summons pursuant to Sections 2.2.3 and 2.2.8;
    d. Subpoenas pursuant to Sections 2.2.3, 2.2.8, and 2.4.5;
    e. search Warrants pursuant to Sections 2.2.2, 2.2.8, 2.4.4, and 2.4.5;
    f. sanctions imposed by the Court upon:
        i. a finding of Party misconduct pursuant to Section 3.3.8;
        ii. a finding of contempt;
        iii. a conviction for one or more offenses under Section 5.1.4, and sentencing pursuant to Section 5.1.5 and Articles 6.1 and 6.2; and
        iv. a finding of correctional violations pursuant to Article 6.3;
    g. covert enforcement orders pursuant to Section 2.2.7; and
    h. other court orders authorized by this Code.
2. Except pursuant to Sections 2.3.1 and 2.4.1, coercive measures may only be undertaken by an Enforcement Agent pursuant to Article 1.7.
3. Although not considered coercive measures under this Code, non-custodial consensual interactions are nonetheless subject to the limitations of Section 2.4.2 when undertaken by an Enforcement Agent, who shall be subject to standards not less than those required when undertaking the same or similar activity as a coercive measure under this Code.

§ 2.2.2. Warrants

1. Except pursuant to Sections 2.2.7, 2.3.1, 2.4.1, and 2.4.2, any search or seizure of persons or property in pursuit of a criminal investigation, or defense thereof, must be through the execution of a Warrant issued by a Complaint Judge pursuant to Section 2.1.1 or the Court pursuant to Section 2.2.8.
2. A Warrant must:
    a. be recorded on an Authoritative Criminal Registry;
    b. be written in English—which version shall prevail in law over any translation created for the use of the accused, but such translations must be as faithful as possible;
    c. identify:
        i. the Prosecutor or Defendant that requested it;
        ii. the Judge that issued it; and
        iii. the Enforcement Agency charged with executing it;
    d. describe with particularity any person or property subject to the Warrant, including:
        i. the offense with which the Defendant is charged, or for which the Warrant was issued;
        ii. the complete name of the Defendant or other subject of the Warrant, and any other person to be searched or seized—or if the name is

unknown, any name or description by which such persons can be identified with reasonable certainty;

iii. the location of the Defendant or other subject of the Warrant, and any other person to be searched or seized, if known; and

iv. a description of any property to be searched or seized;

e. if the offense is within Section 4.1.4.1.a, describe the conditions of the Defendant's release on his own recognizance—or the amount of an appearance bond by which the Defendant can secure his freedom prior to arraignment—pursuant to Sections 4.1.3 through 4.1.6;

f. describe with particularity how the Warrant will be executed, including:

i. the specified time period in which the Warrant may be executed;

ii. the time of day during which the Warrant may be executed;

iii. whether notice must be given prior to entering a residence, pursuant to Section 2.2.5.4;

iv. whether force may be used to execute the Warrant, and if so, the conditions and level of force pursuant to Sections 2.2.5 and 2.2.6;

v. whether, and under what conditions, the arrested individual may be subjected to custodial interrogation pursuant to Section 2.3.5, or to eyewitness identification procedures pursuant to Section 2.3.6; and

vi. whether the executing Agent may obtain records of arms registered or licensed to any subject of the Warrant, and any limits on that access;

g. command the executing Agent:

i. in the case of an arrest, to bring the arrested or otherwise detained person or persons before the Court;

ii. in the case of a search, to make an inventory of the property seized and bring it before the Court; and

iii. to endorse the executed Warrant—showing the hour, date, name, and signature of the Agents who executed the Warrant—and bring the endorsed Warrant before the Court;

h. give probable cause to believe that execution of the Warrant will obtain evidence of a specified criminal offense—or result in the arrest of a person guilty of the specified offense—supported by a sworn affidavit establishing grounds for issuing the Warrant; and

i. be supported by bonds or insurance provided by the executing Agent, sufficient to cover any reasonably foreseeable damages caused by the illegal issuance or execution of the Warrant.

3. Until it has been executed, the Court shall disclose the issuance and contents of a Warrant only to the Agency executing it. For good cause shown, the Court may delay providing notice if it would impede an ongoing investigation of either those subject to the Warrant or the broader criminal enterprise of which the subject is believed to be a part.

§ 2.2.3. Summons and Subpoenas

1. A Complaint Judge pursuant to Section 2.1.1, or the Court pursuant to Section 2.2.8, may issue:
    a. a Summons for a Defendant to appear before a Court; or
    b. a Subpoena for a person to:

i. provide to a Court specified materials believed by the Prosecutor to be:
    1. evidence of an offense;
    2. contraband, fruits of crime, or other things criminally possessed; or
    3. property designed for use, intended for use, or which is being or has been used in committing an offense;
ii. provide to a Court specified materials believed by the Defendant to be exculpatory;
iii. appear as a witness before a Court; or
iv. appear for a deposition pursuant to Section 2.3.7.

2. A Summons or Subpoena must:
    a. be recorded on an Authoritative Criminal Registry;
    b. be written in English—which version shall prevail in law over any translation created for the use of the accused, but such translations must be as faithful as possible;
    c. identify:
        i. the Prosecutor, Defendant, or Petitioner that requested it;
        ii. the Judge that issued it; and
        iii. the time or deadline and place of any submission, appearance, or deposition;
    d. describe with particularity its purpose, including:
        i. the offense with which the Defendant is charged;
        ii. the complete name of the Defendant; and
        iii. in the case of a Subpoena, the items or information to be submitted to the Court, or the reason for appearance or deposition;
    e. command the person summoned or subpoenaed:
        i. to contact the issuing Judge for details of the Court before which that person will be required to appear or submit materials;
        ii. to appear before or submit materials to any such Court; and
        iii. if authorized by the issuing Judge, to appear for an eyewitness identification procedure pursuant to Section 2.3.6, or a deposition pursuant to Section 2.3.7;
    f. state that failure to respond or appear may result in:
        i. the issuance of a Warrant, unless good cause for such failure is shown;
        ii. contempt of court proceedings pursuant to Section 3.3.9; or
        iii. in the case of a Summons, the case proceeding in the Defendant's absence; and
    g. give probable cause to believe that the Defendant is guilty of a specified offense—and in the case of a Subpoena, that the materials, appearance, or deposition are required to properly prosecute that offense or prepare a defense—supported by a sworn affidavit establishing grounds for issuing the Summons or Subpoena.
3. A Summons or Subpoena may be served by certified mail, requiring a signed receipt or some equivalent thereof.
    a. A Summons must include a copy of the Complaint.
    b. In the event the Summons is served by certified mail, return of the receipt signed by the Defendant shall be prima facie evidence of service.

c. A Summons or Subpoena returned unserved, or a duplicate thereof, may be served personally upon the Defendant by an Enforcement Agent.

4. At the discretion of the requesting Party, an unserved Summons or Subpoena may be returned to the issuing Court, which shall cancel it if that Court finds the interests of justice would thereby be served.

§ 2.2.4. Probable Cause

1. In general, a finding of probable cause requires sufficient facts and circumstances grounded in credible information to cause a reasonably prudent person to think that a crime is being, has been, or is about to be committed. Probable cause for a coercive measure exists when, given the nature of the evidence sought and the crime alleged, there is a fair probability that the person or thing to be searched or seized will be found in a particular place, or that the information sought will be obtained by the requested coercive measure.
2. In making an assessment under Subsection 1, a Court must determine:
    a. the historical facts, or events, and any relevant circumstances leading up to the search or seizure or the request for coercive measure; and
    b. whether these facts and circumstances, viewed from the standpoint of an objectively reasonable person, amount to probable cause.
3. In assessing probabilities in particular factual contexts, the task of the issuing Court is to make a nontechnical decision under the totality of the circumstances—based on a commonsense appreciation of human behavior, and the practical considerations of everyday life on which reasonably prudent people act. Probable cause requires only a fair probability, which:
    a. is less than a certainty, proof beyond a reasonable doubt, a preponderance of the evidence, or even a prima facie showing of criminal activity;
    b. is more than a mere hunch or gut feeling, a good-faith perception, or even a reasonable suspicion (see, e.g., Section 2.2.7.5); and
    c. makes it possible, based on the same facts, to have probable cause to search or seize, or to otherwise obtain information about, more than one person or thing—but a fact that merely supports an inference that some other fact is possible, among a range of possibilities, does not support an inference that any specific possible fact is itself a fair probability.
4. Probable cause may be based on, among other things:
    a. direct observation of potential criminal activity or evidence thereof;
    b. credible information from a named witness or Victim;
    c. a credible, corroborated tip from a confidential informant; or
    d. hearsay, as defined in Section 3.1.4, provided there is a substantial basis for believing that the source of the hearsay is credible and that the information furnished has a factual basis.
5. For purposes of accuracy and court review, the factual basis for probable cause must be articulated and recorded as soon as possible after the relevant information is observed or revealed.

§ 2.2.5. Proportionality and Minimization

1. Prior to the formation of a Court, a rebuttable presumption exists in favor of using the least invasive means to achieve the legal objectives of the Party seeking the coercive measure. Among other things:
    a. the issuance of a Summons is preferred to an arrest Warrant;
    b. the issuance of a Subpoena to the Defendant is preferred to a search Warrant;
    c. for data, records, or physical evidence held by third parties, a voluntary request in the first instance is preferred to a Subpoena—which, in turn, is preferred to a search Warrant; and
    d. a court order for covert enforcement should only be used where other methods are reasonably likely to impede ongoing investigations, or facilitate the flight of suspects or destruction of evidence.
2. Action pursuant to a Warrant that raises special privacy or dignitary concerns, poses a substantial risk of serious physical injury to others (including the subject of the Warrant), or involves an unusual show or degree of force, should be used only when:
    a. a justifiable interest in its use clearly outweighs the harm that is reasonably likely to result from the intrusion; and
    b. it is conducted in a manner that minimizes the risk of harm—including the acquisition of information from third parties who themselves are not properly subject to investigation—so that the extent of the intrusion is proportionate to the objective that justifies it.
3. Arrest Warrants should only be issued if:
    a. the offense of which the Defendant is suspected is a felony, and:
        i. there is reason to fear that the Defendant will evade prosecution, the execution of a sentence, or other precautions;
        ii. there is an immediate risk that the Defendant will remove evidence, influence witnesses or accomplices and co-conspirators, or otherwise interfere with any fact-finding in the case; or
        iii. it is deemed to be necessary in order to prevent the Defendant from again committing an offense; or
    b. after a Summons has been issued:
        i. the Defendant fails to appear;
        ii. there is probable cause to believe that the Defendant will fail to appear; or
        iii. for any reason the Summons cannot be served or delivered, despite reasonable efforts of the executing Enforcement Agent.
4. In executing a Warrant to enter a dwelling, an Enforcement Agent must identify himself, announce his purpose, and provide a reasonable opportunity for the occupants to allow entry—except when the Judge or Court has made a specific finding that there is probable cause to believe that:
    a. Agents' knocking and announcing their presence would be dangerous or futile; or
    b. it would inhibit the effective investigation of crime (e.g., by allowing the destruction of evidence).

§ 2.2.6. Use of Force

1. Enforcement Agents should use physical force only for the purpose of effecting a lawful seizure (including an arrest or detention), carrying out a lawful search, preventing imminent physical harm to themselves or others, or preventing property damage or loss.
2. Whenever possible and appropriate, Enforcement Agents should:
    a. actively seek to avoid using force by employing techniques such as de-escalation; and
    b. provide clear instructions and warnings before using force.
3. Consistent with Section 2.2.5, in instances in which force is used, Enforcement Agents must use the minimum force necessary to perform their duties safely, where such force must be proportionate to the legitimate objective at stake.
    a. Deadly force may not be used except in response to an immediate threat of:
        i. serious physical harm or death to Enforcement Agents or others; or
        ii. serious damage to critical infrastructure or property that is essential to the preservation of life.
    b. Non-deadly force may not be used if its impact is likely to be out of proportion to the threat of harm to Agents or others, or to the extent of property damage threatened. When non-deadly force is used to carry out a search or seizure—including an arrest or detention—such force must be proportionate to the threat posed in performing the search or seizure, and to the societal interest at stake in performing the search or seizure.

§ 2.2.7. Covert enforcement

1. Covert enforcement includes:
    a. intrusive surveillance, meaning any surveillance that:
        i. violates a person's reasonable expectations of privacy, or constitutes a trespass to obtain information that, if not authorized by Warrant or court order, would be an offense under this Code;
        ii. involves the mass non-consensual processing or monitoring of data relating to persons who are not under suspicion; or
        iii. involves mass data collection in a place of public use or in publicly available transportation services, where:
            1. a place of public use is defined as those parts of any building, land, street, waterway or other location that are accessible or open to members of the public—whether continuously, periodically or occasionally—and encompasses any commercial, business, cultural, historical, educational, religious, judicial, entertainment, recreational, or similar place that is so accessible or open to the public; and
            2. a transportation system is defined as all facilities, conveyances and instrumentalities that are used in or for publicly available services for the transportation of persons or cargo; and
    b. undercover investigation, meaning the deployment of Warrant Agents authorized to engage in activity that, if not authorized by Warrant or court order,

would be a violation of Enforcement Agent standards or an offense under this Code.

2. To seek authorization for activities under Subsection 1, a Warrant Agency must:
    a. request that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2 to serve as a Collateral Judge pursuant to Section 5.3.1; and
    b. submit an application to the Collateral Court, supported by:
        i. a sworn affidavit establishing grounds for issuing the court order; and
        ii. bonds or insurance provided by the Agency, sufficient to cover any reasonably foreseeable damages caused by the illegal issuance or execution of the court order.
3. A Court summoned under Subsection 2 may:
    a. reject the application—with a rebuttable presumption against approving an application that was previously rejected, without provision, and is brought by the same Agency as before;
    b. provisionally reject the application, with leave to amend and resubmit promptly for consideration under this Subsection;
    c. upon a finding of reasonable suspicion under Subsection 5, issue a court order authorizing specific covert enforcement measures for a period not to exceed 30 days, subject to strict requirements of reporting and record retention;
    d. extend the court order for additional consecutive periods not to exceed 30 days each, but:
        i. only upon a fresh finding of reasonable suspicion under Subsection 5; and
        ii. with each successive renewal subjected to increasingly exacting scrutiny based on the presumption that probable cause to prosecute should either ripen or be dispelled;
    e. appoint an expert under Section 3.3.3.2.b to provide additional perspective in ex parte proceedings; and
    f. review and terminate the order at any time.
4. If a covert enforcement order is not extended pursuant to Subsection 3.d or terminated pursuant to Subsection 3.f, the Court shall:
    a. if no probable cause has been found, order the Warrant Agency to notify the subjects of covert enforcement within 30 days regarding the general methods used and information obtained, and then to destroy such information; or
    b. if probable cause has been found, order the Warrant Agency to:
        i. engage a Prosecutor qualified under Section 1.4.1, to initiate a criminal case pursuant to Section 2.1.1; or
        ii. refer the case for consideration—consistent with the level of confidentiality deemed appropriate by the Court under Section 3.1.3—for potential prosecution pursuant to Section 1.10.1.1.b.iii; and
    c. in each case, dissolve.
5. A Court may only issue an order for covert enforcement upon a finding of reasonable suspicion to believe that the target of the proposed covert activities is involved in or has evidence of serious criminal activity, and that covert enforcement pursuant to this Section will further the investigation of an offense that is any felony for which the prescribed maximum term of imprisonment is not less than 15 years. Reasonable suspicion:

a. is a lower standard than probable cause, as defined in Section 2.2.4, but more than a mere hunch or gut feeling;
b. requires a particularized and objective basis to believe that crime is afoot under the totality of the circumstances; and
c. may not be based upon an individual's protected attributes under CoD 1.13, or violate equal protection under CoD 7.1.2.2 and CoD 7.3.1.3.

6. A court order for intrusive surveillance:
   a. must specify the intrusiveness of the methods used, the sensitivity of the information that its use is likely to obtain, and the limits on data retention, including automatic deletion of data unrelated to the authorized objective, encryption, and access controls; and
   b. must provide reasonable assurance that the methods used are more likely, on the balance of probabilities, to obtain evidence of the commission of an offense—than to undermine the legitimacy of the criminal justice system, or to result in the technology being deployed in an unlawful manner or toward unlawful ends.
7. A court order for undercover investigation:
   a. may only be executed by Senior Warrant Agents who have received advanced training and certification in undercover techniques, or who have at least 5 years' experience in the same;
   b. must specify the extent to which an undercover Agent may participate, if at all, in the activities under covert investigation; and
   c. exempts the Warrant Agent from the requirement to display insignia and provide identifying information under Section 1.7.3.3, to give warnings prior to consensual interactions under Sections 2.2.1.3 and 2.4.2, or to otherwise engage in actions required of Enforcement Agents by this Code that would jeopardize the Agent's undercover status.

§ 2.2.8. Trial Court Issuance and Review

1. After a Court has been established pursuant to Sections 2.1.1.3.b and 3.1.1.1, that Court:
   a. may issue at the request of either the Prosecutor for the purpose of criminal investigation, or the Defendant for the purpose of furthering his defense:
      i. arrest Warrants;
      ii. search Warrants;
      iii. Summons; and
      iv. Subpoenas;
   b. upon motion of the Defendant pursuant to Sections 4.2.1.2.d and 4.2.1.2.e, must review any previously authorized Warrant or other coercive measures under a de novo legal standard—applying independent scrutiny without deference to the Complaint Judge's conclusions—to determine if the coercive measures were legitimately sought, facially valid, and lawfully executed; and
   c. shall have original jurisdiction over such determinations for purposes of Subsection 2.
2. No person shall be:
   a. criminally liable for an action undertaken pursuant to a legitimately sought, facially valid, and lawfully executed coercive measure under this Code—and

any related criminal prosecutions shall be stayed and any time limitation tolled, as necessary, until the Court rules under Subsection 1.b; or

b. civilly liable for punitive damages for an action undertaken pursuant to a legitimately sought, facially valid, and lawfully executed coercive measure under this Code, nor for compensatory damages or any other civil liability if such coercive measure results in a conviction—and any claims for civil damages shall be tolled until final disposition is reached in the relevant case.

3. A Trial Court may, with the consent of all Parties, assume jurisdiction over related civil claims not excluded by Subsection 2.b.

2.3. Measures against Persons

§ 2.3.1. Arrests without Warrants

1. Any person may arrest another person without a Warrant if she has probable cause to believe that such other person has committed or attempted to commit:
    a. a felony in the presence of the person making the arrest; or
    b. a misdemeanor in the presence of the person making the arrest, where she has probable cause to believe that unless immediately arrested, such other person:
        i. will not be apprehended; or
        ii. may cause serious physical injury to himself or others or serious damage to the property of others.
2. Except as provided in Subsection 1, all other arrests shall be conducted pursuant to a Warrant issued pursuant to Section 2.2.2 and executed pursuant to Section 2.3.2 by an Enforcement Agent under Article 1.7.
3. In all cases of arrests without a Warrant, the person making such arrest must inform the person arrested of the object and cause of the arrest—except when the accused is in the actual commission of the offense or immediate flight from it.
4. If the person making the arrest is not an Enforcement Agent under Article 1.7, she shall deliver the person arrested without unnecessary delay to an Enforcement Agent.
5. A person arrested without a Warrant must be released within 4 hours unless:
    a. a Prosecutor qualified under Section 1.4.1 brings a Complaint against the person arrested;
    b. the Prosecutor requests that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge on an expedited basis, informing the Chief Justice of the release deadline; and
    c. the person is thereby brought before a Court pursuant to Section 4.1.1.

§ 2.3.2. Arrest Procedures

1. Prior to executing an arrest Warrant, whether pursuant to Complaint or to other court order for detention, Enforcement Agents must identify themselves, announce their purpose, and request the peaceful submission of any Party subject to the arrest Warrant—unless under the particular circumstances, probable cause exists to believe that doing so would:
    a. put those executing the arrest Warrant or innocent third parties at substantial risk of imminent physical harm;
    b. encourage a person subject to arrest to escape; or
    c. result in the destruction of evidence necessary to prove criminality.
2. Without undue delay, an arrested person must be afforded a reasonable opportunity to make a telephone call to, or otherwise make effective communication with, any person the arrestee may choose.
3. A person arrested with a Warrant shall be provided copies both of the Warrant and of the Complaint or court order for detention; and:
    a. if the offense is within Section 4.1.4.1.a, the arrestee shall be:

i. released on his own recognizance, or upon posting an appearance bond under Section 2.2.2.2.e, in an amount set in accordance with Section 4.1.4;
ii. subject to any conditions set pursuant to Section 4.1.5 that are necessary to secure his freedom prior to arraignment and any detention hearing or review of release; and
iii. directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice; or

b. if the offense is not within Section 4.1.4.1.a, if the person arrested cannot meet the conditions of release provided in the Warrant, or if no such conditions are prescribed, the arrestee must be taken without undue delay—and, in any event, within four hours of arrest—before a Court, which shall proceed as provided in Article 4.1 or Sections 5.3.1 through 5.3.4.

4. If the arrestee has not been released or taken before a Court as required in Subsection 3, such person shall be released on his own recognizance, and shall be directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice.
5. Persons detained shall be treated per the requirements of Section 6.3.1.

§ 2.3.3. Agent-involved Pursuits

1. Enforcement Agents should consider a person to be "fleeing" (or in "flight") for purposes of arrest only when it is reasonably apparent that the person is attempting to elude or evade capture by an Enforcement Agent, after the Agent has attempted to conduct a lawful stop or custodial arrest of that person.
2. Enforcement Agents may pursue a fleeing person, whether by foot or vehicle, only when:
    a. the nature and severity of the conduct or offense for which the person would be pursued are such that his immediate apprehension directly advances the goal of public safety; and
    b. the pursuit would not subject the Agent or a member of the public to an undue risk of harm.
3. All pursuits should be conducted in a manner commensurate with the considerations in this Section, and consistent with Sections 2.2.5 and 2.2.6. A pursuit must cease once it poses an undue risk of harm to any person, or when immediate apprehension is no longer necessary to advance the goal of public safety.
4. If a pursuit results in the apprehension of a fleeing person, that person should, as soon as reasonably practicable, be placed in the custody of Agents who were not involved in the pursuit, to minimize the risk of retaliation or reprisals by any pursuing Agents.
5. Any use of force during or after a pursuit should be applied according to Section 2.2.6.

§ 2.3.4. Searches Incident to a Lawful Custodial Arrest

1. An Enforcement Agent may conduct a search incident to a lawful custodial arrest to protect the safety of the Agent or others, or to prevent the destruction of evidence.
    a. A search incident to arrest is limited to:

i. a frisk of the arrestee by means of a pat-down search of the outside of the arrestee's clothing; and
ii. a search of the immediately surrounding area from which the arrestee could access a weapon or evidence.

b. Unless authorized pursuant to Sections 2.4.1 through 2.4.3, the use of more intrusive searches at the time of arrest is limited to circumstances in which the Agent has a reasonable suspicion (see, e.g., Section 2.2.7.5) to believe that the arrestee is concealing a weapon or evidence that would not be uncovered through a search under Subsection 1.a.

2. If the person making the arrest is not an Enforcement Agent under Article 1.7, the arrestor may conduct a search incident to arrest pursuant to Subsection 1 if the arrestor has a reasonable suspicion to believe:
   a. the arrestee is armed and presently dangerous; and
   b. the search is strictly necessary to ensure the arrestor's immediate safety pending arrival of, or the arrestee's delivery to, an Enforcement Agent.
3. A Corrections Agent may conduct a more thorough search of the arrestee's person or property after transport to a correctional facility. Such search shall either:
   a. be conducted pursuant to a written policy that:
      i. specifies the scope of the search;
      ii. is reasonably designed to ensure the security of the facility and the health and safety of persons detained there; and
      iii. is applied even-handedly to all persons admitted to the facility; or
   b. be based on reasonable suspicion, documented in advance, that the search will turn up evidence or contraband.
4. Items seized under this Section shall be treated in the same way as items seized under a search Warrant pursuant to Section 2.4.7.

§ 2.3.5. Custodial Interrogations

1. Any questioning of arrested individuals by an Enforcement Agent must treat persons with dignity and fairness, with the sole objective of obtaining accurate and reliable information free from coercion.
2. Absent exigent circumstances, Enforcement Agents must:
   a. record questioning of suspects in its entirety;
   b. record questioning of witnesses whenever feasible; and
   c. document questioning in situations in which recording is not conducted:
      i. by taking notes contemporaneously when possible; or
      ii. by memorializing conversations immediately thereafter.
3. Enforcement Agents must inform suspects of their right to counsel and their right to remain silent during any questioning—and the Agents must ensure that any waivers of those rights are meaningfully made.
   a. Waivers of rights must be documented using appropriate forms, and must be recorded in accordance with Subsection 2.
   b. A juvenile may give a valid waiver of the right to counsel and the right to remain silent only after meaningful consultation with, and in the presence of, their Attorney, parent, or guardian.

c. Any invocation of rights must be respected, with Enforcement Agents taking time to clarify any uncertainty as to whether rights are being invoked.

4. When questioning arrested individuals, Enforcement Agents must:
    a. minimize the length of questioning;
    b. avoid leading questions and disclosing details that are not publicly known;
    c. avoid threats of harm or harsh coercive measures against the individual or others;
    d. avoid making promises of benefits to the individual or others;
    e. avoid the use of deceptive techniques that are likely to confuse or pressure suspects in ways that might undermine the accuracy of evidence;
    f. ensure the individual has access to basic physical and personal needs, including food, water, rest, and restrooms; and
    g. not question the individual in an environment that is intentionally or unreasonably uncomfortable.
5. Enforcement Agents should carefully assess a person's background, age, education, language access, mental impairment, and physical condition, in order to determine vulnerability to coercion and suggestion. Individuals who are hearing-impaired or non-English speakers should be provided with any necessary assistance or translators prior to the reading of rights or any questioning.

§ 2.3.6. Eyewitness Identifications

1. Enforcement Agents may not conduct eyewitness identifications unless they have a strong basis to believe:
    a. the suspect was the culprit and should therefore be presented to the eyewitness; and
    b. the eyewitness can reliably make an identification.
2. Enforcement Agents must ensure that the specific procedures they use to test the memory of an eyewitness are informed by existing research. Those procedures should include:
    a. direction to conduct any identification as early as possible in the course of an investigation;
    b. instructions to explain the procedure to the eyewitness in easily understood terms;
    c. procedures in which the person administering the eyewitness identification does not know which person is the suspect;
    d. procedures that minimize the use of showups, and permit such identifications only if done promptly and in a neutral manner and location;
    e. procedures for fairly selecting non-suspect (or "filler") persons or images to display to the eyewitness;
    f. procedures for presenting persons or images to the eyewitness in a non-suggestive manner;
    g. procedures for documenting any identification or non-identification by the eyewitness; and
    h. procedures that employ sequential or simultaneous presentation of photos in photo lineups.
3. Eyewitnesses should be asked to express verbally how confident they are in their identification at the time it is made—but Agents should not provide feedback,

encouragement, or reinforcement to eyewitnesses before, during, or after an identification procedure.

4. Eyewitness identification procedures must be recorded when feasible.

§ 2.3.7. Depositions

1. Upon motion of any Party or a witness, the Court may order the examination on oral deposition of any person, except the Defendant, under the following circumstances:
    a. a Party shows that the person's testimony is material to the case and that there is a substantial likelihood the person will not be available at the time of trial; or
    b. a witness is incarcerated for failure to give satisfactory security that he will appear to testify at a trial or hearing.
2. Except as otherwise provided herein, depositions shall be taken in a reasonable manner prescribed by the Court.
    a. Any statement of the witness being deposed—which is in the possession of any Party—shall be made available for examination and use at the taking of the deposition to any Party who would be entitled thereto at trial.
    b. A Defendant may not be deposed without that Defendant’s consent and without the presence of Defense Counsel, if any.
    c. The scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.
    d. A deposition must be recorded.
        i. The Party taking the deposition shall provide the opposing Party with a copy of the recording within seven days after the taking of the deposition or not less than 10 days before trial, whichever is earlier.
        ii. The Parties may stipulate, or the Court may order, that a deposition be taken by telephone or similar audiovisual means.
3. A Defendant shall have the right to be present at any examination. If the Defendant is in custody, the Enforcement Agent having custody:
    a. shall be notified by the Court of the time and place set for the examination; and
    b. unless the Defendant waives in writing the right to be present, shall produce the Defendant at the examination and remain with the Defendant during it.
4. In appropriate circumstances and with the consent of the requesting Party, the Court may order that a deposition be taken on written interrogatories in the manner prescribed by the Court.

2.4. Measures against property and privacy

§ 2.4.1. Exigent Circumstances

1. Exigent circumstances exist where immediate warrantless action is objectively reasonable and necessary to:
    a. prevent an imminent danger of death or serious bodily injury;
    b. render emergency aid or assistance;
    c. prevent the imminent destruction or removal of criminal evidence;
    d. pursue a suspect fleeing from imminent lawful arrest or detention; or
    e. address any other urgent and compelling need, where delay would indisputably risk substantial harm to persons or the effective enforcement of the law.
2. An Enforcement Agent may enter premises under exigent circumstances and conduct reasonable warrantless searches or seizures related to such exigent circumstances.
    a. Exigent circumstances must be objectively reasonable under the facts known to the Agent at the time.
    b. The authority under this Section shall terminate once the exigency is resolved.
    c. Exigent circumstances may not be invoked where the urgency is created by the Agent's own unlawful or unreasonable decisions or actions.
3. If criminal evidence is obtained pursuant to this Section by a person who is not an Enforcement Agent under Article 1.7, that person shall deliver such evidence without unnecessary delay to an Enforcement Agent pursuant to Section 2.4.7.2.

§ 2.4.2. Consent

1. During a lawful non-custodial encounter—after clearly communicating a person’s right not to consent and to limit or withdraw consent at any time—an Enforcement Agent:
    a. may ask for permission to search a person or that person’s property;
    b. may make non-coercive inquiries related to an investigation, subject to Subsection 4; and
    c. may request the surrender of any property of interest to a criminal investigation; but
    d. may not impede the individual from leaving or otherwise terminating the encounter.
2. Under this Section, consent is:
    a. valid only if:
        i. given voluntarily, based on the totality of circumstances, including the individual's age, mental capacity, and background;
        ii. informed, based on adequate disclosure of material facts;
        iii. specific to the act or transaction in question;
        iv. provided by a person who has the actual or apparent authority to give consent; and
        v. strictly limited to the terms of consent given, and terminates immediately upon withdrawal of consent; and
    b. invalid if obtained through coercion, fraud, or misrepresentation—or by undue influence or exploitation of vulnerability to which a reasonable person in the same circumstances would have yielded.

3. Unless authorized pursuant to Section 2.2.7, an Enforcement Agent may not solicit a third party to undertake any interaction on the Agent's behalf in order to avoid the requirements of this Section.
4. Any questioning of a person arrested or detained by an Enforcement Agent must be conducted pursuant to Section 2.3.5.
5. Enforcement Agents must maintain thorough records of any interactions and compliance with requirements under this Section.

§ 2.4.3. Plain view

1. An Enforcement Agent lawfully present in a location may seize an item without a Warrant or any further judicial authorization if the Agent has probable cause to believe that the item is:
    a. evidence of criminal conduct;
    b. contraband, fruits of crime, or other things criminally possessed; or
    c. property designed for use, intended for use, or that is being or has been used in committing crime.
2. Subsection 1 applies equally to evidence detected through any of the human senses (e.g., sight, sound, and smell), so long as:
    a. the Agent does not move, manipulate, or otherwise intrude upon items to develop probable cause for seizure;
    b. the discovery occurs within the scope of lawful observation;
    c. the incriminating character of the evidence is immediately apparent; and
    d. the Agent can lawfully access the item to seize it.

§ 2.4.4. Search Warrant Execution

1. A search Warrant must be executed:
    a. within a specified time not to exceed 10 days from issuance; and
    b. in the daytime, unless the issuing Judge explains in the Warrant why the character of the application requires that it be executed at night.
2. Consistent with Section 2.2.5, the Enforcement Agent executing the Warrant may break into any house, dwelling, vehicle, or structure, or any part thereof—or anything therein—if:
    a. after notice of the Enforcement Agent's authority and purpose, the Agent receives no response within a reasonable time or is refused admittance; or
    b. the Warrant authorizes the Enforcement Agent to enter without notice.
3. An Enforcement Agent executing a search Warrant may:
    a. pursuant to Section 2.4.3, seize any property lawfully discovered during the course of executing the Warrant;
    b. make or cause to be made photographs, measurements, impressions, or scientific tests; and
    c. search any person present on premises or in vehicles listed in the Warrant if:
        i. it is reasonably necessary to protect the Enforcement Agent or others from the risk of a concealed weapon; or
        ii. it reasonably appears that property or items enumerated in the search Warrant might be concealed upon the person.

§ 2.4.5. Third-party Searches and Subpoena (Duces Tecum)

1. At the request of the Prosecutor, a Judge may issue:
    a. a search Warrant under Section 2.2.2, or a Subpoena under Section 2.2.3,
    b. brought against a third party who is not a Defendant or target of surveillance under Section 2.2.7,
    c. provided that:
        i. any property, records, or data requested—or to be accessed—either belong to the Defendant or the target of surveillance, or contain personally identifiable information about such person;
        ii. the third party has refused a reasonable consensual request to provide access to the property, records, or data to the Prosecutor, or to the Agency conducting surveillance under Section 2.2.7—and the third party has had an opportunity to justify this refusal to the Judge or Court; and
        iii. there is probable cause to believe the property, records, or data requested, or to be accessed, will further the investigation.
2. Under this Section, a Subpoena shall be preferred to a search Warrant, unless there are reasonable grounds to believe a Subpoena:
    a. will be ignored or otherwise futile; or
    b. may inhibit the effective investigation of crime—such as a substantial risk that, upon issuance of a Subpoena, evidence will be destroyed, concealed, altered, or falsified.
3. A Subpoena or search Warrant issued pursuant to Subsection 1:
    a. must specify reasonable restrictions on the Prosecutor's or authorized Agent's access to, use, and retention of the property, records, or data:
        i. to limit the impact on the third party; and
        ii. to safeguard the rights of the person under investigation, and the rights of other persons whose property, records, or data may be intermingled with that of the person under investigation;
    b. may order:
        i. the disclosure of metadata necessary to identify a communications service provider or the path of a communication;
        ii. for a specified period, the preservation of specified stored computer data, where there are reasonable grounds to believe the data is particularly vulnerable to loss or modification; and
        iii. the search and seizure of stored computer data—including the power to make and retain a copy of such data, such as a printout or other intelligible output from a computer system in plain text format; and
    c. may prohibit the third party from disclosing the existence of the Subpoena or search Warrant to the target of an investigation pursuant to Section 2.2.7, provided that:
        i. there is probable cause to believe disclosure would significantly impair a specific and ongoing investigation; and
        ii. absent extraordinary circumstances, any prohibition shall be for a fixed period of time.
4. As ordered by the Court pursuant to this Section, the person in control of a computer system or the communications service provider must:

a. produce, disclose, or preserve the specified computer data, or provide a printout or intelligible output of such data; or
b. allow authorized Enforcement Agents to access and use the system or medium to search the available computer data, or to collect such data through technical means.

5. As used in this Section:
    a. “communications service provider” is defined as an entity that provides to users of its service the ability to send, receive, process, or store communications or data, or that processes or stores such communications or data on behalf of such users;
    b. “computer system” is defined as any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data or any other function;
    c. “computer data” is defined as any representation of facts, information, or concepts in a form suitable for processing in a computer system, including:
        i. programs suitable to cause a computer system to perform a function; and
        ii. metadata that:
            1. relates to a communication by means of a computer system;
            2. is generated by a computer system that is part of the chain of communication; and
            3. shows the communication’s origin, destination, route, time, date, size, duration, or the type of underlying services; and
    d. “stored computer data” means computer data in a computer system—or on a medium from which computer data is capable of being reproduced—that is preserved for future use and is not in the process of real-time transmission.
6. A communications service provider is not liable under civil or criminal law for disclosures made under this Section.

§ 2.4.6. Evidence Collection, Analysis, and Preservation

1. To ensure the reliability of criminal investigations, Enforcement Agents must:
    a. require all evidence be collected, analyzed, and retained in a manner that is impartial, consistent, and thorough—and that is designed to maximize accuracy and minimize any contamination or alteration of information;
    b. ensure, to the best of their abilities, that the methods used to collect, analyze, present, and preserve forensic evidence are sufficiently repeatable, reproducible, and accurate;
    c. thoroughly, accurately, and intelligibly document evidence that is collected; and
    d. minimize cognitive biases that can reduce accuracy in evidence collection.
2. After the formation of a Court pursuant to Section 2.1.1.3.b, Enforcement Agents must share all relevant evidence with the Parties in an ongoing fashion—regardless of the status of an investigation, criminal case, or criminal proceeding—except for information that must be redacted pursuant to Section 1.8.2.3.c.
3. Agencies must ensure that all forensic records—including conclusions and underlying bench notes—are:
    a. documented in reports that:
        i. use consistent, accurate, and straightforward terminology;

ii. include complete and thorough explanations of methods and results;
iii. distinguish data from interpretations, opinions, and conclusions;
iv. disclose relevant laboratory-wide data, including protocols and procedures, proficiency results, and quality reports; and
v. disclose all known limitations, measures of uncertainty, and error rates; and

b. disclosed to the Prosecutor and Defendant—on equal terms and an ongoing, timely basis—save for any delayed notification pursuant to Sections 2.2.2.3 and 2.4.5.3.c.

4. Agencies must ensure that forensic evidence is properly preserved and retained, both before and after adjudication, for a reasonable period of time—taking into account factors such as the nature of the offense, the potential probative value of the evidence, the interests of the Defendant and others, and storage costs. Before forensic evidence is discarded or destroyed, Agencies should provide notice and an opportunity to respond, when feasible, to the Court and Court Marshal (or their successors), the Prosecutor, any Defendant, other Parties, and Victims.

§ 2.4.7. Receipt, Return, and Custody

1. An Enforcement Agent seizing property pursuant to a coercive measure, or under Sections 2.4.1 through 2.4.3, must:
    a. make a thorough inventory of the property seized, which inventory shall be made in the presence of the person from whose possession or premises the property was taken, if that person is present;
    b. give to the person from whom or from whose premises the property was taken if they are present—or leave, at the place from which the property was taken, a copy of the endorsed search Warrant with a copy of the inventory;
    c. promptly return the search Warrant and inventory to the Court; and
    d. competently follow the instructions of the Court regarding retention, management, or return of the property.
2. If a person who is not an Enforcement Agent comes into possession of property during an arrest without a Warrant under Section 2.3.1, or in exigent circumstances as defined by Section 2.4.1:
    a. the person has a duty to deliver the property—without undue delay—to an Enforcement Agent under Article 1.7; and
    b. a receiving Enforcement Agent must:
        i. inform the person of the duty under this Section to deliver any seized property; and
        ii. upon receipt of any such property, fulfill the requirements of Subsection 1 to the best of the Agent's ability.
3. No criminal liability arises from the possession of property or items seized during a lawful arrest or search if it is held, reported, and released in compliance with this Section and the lawful orders of the Court.

3. Court Process

3.1. General Provisions

§ 3.1.1. General Procedure

1. After the formation of a Court pursuant to Section 2.1.1.3.b, a criminal case shall proceed by court order, judgment, or other decision:
    a. in response to the Complaint, to other pleadings, and to motions of the Parties;
    b. as required by and consistent with Chapters 2 through 4, and Articles 5.1, 6.1, and 6.2; and
    c. as necessary, upon motion of the Court.
2. Immediately upon entry of an order or judgment, the Court shall file the order or judgment with the Registry and shall make a diligent effort to assure that all Attorneys of record have received notice of the entry of the order.
3. Pursuant to Section 3.1.2, the Court is responsible for ensuring a true, complete, and accurate record is kept of all proceedings.
4. On its own motion or that of a Party, the Court may hold one or more pretrial conferences to promote a fair and expeditious trial.
    a. When a conference ends, the Court must prepare and file a memorandum of any matters agreed to during the conference.
    b. The Prosecutor may not use any statement made during the conference by the Defendant or Defense Counsel, unless it is in writing and is signed by the Defendant and Defense Counsel.

§ 3.1.2. Case Record

1. In conjunction with a Registry under Article 1.8, the Court shall ensure the creation and maintenance of a case record that contains, among other things:
    a. the Complaint, as originally filed and as subsequently amended—and any previously dismissed Complaint related to the present case that was brought by the Prosecutor, Victim, or other Party;
    b. any Warrant or other coercive measure issued by a Complaint Judge in the case—and any documents and materials related to the case involving such Warrants or coercive measures, including applications that were rejected by a Complaint Judge;
    c. any order for covert enforcement that preceded this case—via Section 2.2.7.4.b, or by other means—and any related documents and materials, including applications that were rejected;
    d. orders and decisions by the Court, including judgment and any sentence;
    e. documents and material as originally filed with the Registry by a Party or other participant—or forwarded to the Registry by the Court for purposes of filing;
    f. the evidence communicated to the Court and, if different, as registered by the Registry (including any numbering);
    g. any translations;
    h. case-related correspondence addressed or forwarded to the Court or the Registry;

i. the list of witnesses called in the proceedings;
j. the list of the Parties, including Victims under Article 1.6; any Intervenors pursuant to Section 4.2.5; and any others authorized to participate in the proceedings;
k. the list of Victims asking for reparations;
l. the transcripts and indexes to the transcripts;
m. the minute order for the Court's oral decisions and related information;
n. the audiovisual recordings of proceedings; and
o. any other item pursuant to an order of the Court.

2. By order of the Court, the case record may also contain the record of any related prior cases and any collateral proceedings.
    a. Following an order of the Court, all or part of one case record shall be transferred to another case record—for reasons relating to, among other things:
        i. joinder or separation of trials under Section 2.1.3 and 4.2.7;
        ii. case de-confliction under Section 2.1.4;
        iii. case consolidation under Section 2.1.5;
        iv. sentencing under Article 6.1 and Section 6.2.3; or
        v. extradition under Article 5.4.
    b. Prior to the transfer of any case record, the Registry shall inform any affected Court so that it may, where necessary, issue an order restricting the transfer, which may be challenged by any Party—or by the Court to which the case record is to be transferred—as an Intervenor under Section 4.2.5 or an Appellant under Section 5.2.3.

§ 3.1.3. Levels of Confidentiality

1. As appropriate, the Court shall classify and label records as follows:
    a. "public," meaning available to the public;
    b. "confidential," meaning not to be disclosed to the public;
    c. "under seal," meaning confidential as well as accessible and known only to a limited number of persons as determined and listed by the Court; or
    d. "secret," meaning accessible and known to a very limited number of persons as determined and listed by the Court, which shall set restrictions on circulation and individual viewing, including as regards downloading and printing.
2. When the Court orders the disclosure of all or part of the record of closed proceedings in accordance with this Code and the Code of Destiny, the Court and Court Marshal shall ensure—if possible, with the assistance of the Parties—the security or safety of Victims, witnesses, or other persons at risk as a result of any disclosure.
3. No classification pursuant to this Section shall deny a later Court the right to access or reclassify any records pertinent to a case under its jurisdiction.

§ 3.1.4. Rules of Evidence

1. As used in this Code, "evidence" means any information or material—including testimony, records, tangible objects, digital data, and matters subject to judicial notice—that:
    a. is lawfully received in a court proceeding in Destiny; and

b. tends to prove or disprove the existence of a relevant fact.

2. Except as otherwise provided in Subsection 3 or elsewhere in this Code, all actions and proceedings in the Courts shall abide by CoD 6.2.4 in general, and shall specifically adopt the following rules from the Uniform Rules of Evidence:
    a. for relevance, Rules 401 through 404(c)(2), 405, 406, and 412(a) through 412(d)(2);
    b. for witnesses, Rules 601 through 605, 607 through 616, and 701 through 705;
    c. for hearsay, Rules 801 through 808;
    d. for evidentiary authentication or identification, Rules 901 through 903; and
    e. for contents and admissibility of records, Rules 1001 through 1007.
3. The rules referenced in Subsection 2:
    a. are meant to ensure that truth may be fairly ascertained and issues justly decided under this Code and the Code of Destiny—and any potentially incongruous or ambiguous terms shall be interpreted consistent with CoD 6.3.3 and construed to further:
        i. the rights, rules, and purposes of CoD Chapter 7; and
        ii. the objectives of the Rules of Evidence, including facilitating truth-seeking, guaranteeing fairness, promoting accuracy, assuring reasonable efficiency, and meeting developments in the law of evidence;
    b. in the interests of justice, may be subject to additional guidance from the Court—on its own motion or the written motion of a Party, and after providing reasonable notice and an opportunity to be heard by the Parties—in a written decision giving reasons for the court order consistent with the objectives of the Rules of Evidence; and
    c. apply, but not strictly so, in:
        i. the review of applications submitted under Section 5.3.1.1;
        ii. the issuance of Warrants or other coercive measures;
        iii. the determination of questions of fact preliminary to admissibility of evidence concerning the qualification of an individual to be a witness, the existence of a privilege, or the admissibility of evidence;
        iv. determinations concerning detention and pretrial release under Sections 4.1.3 through 4.1.6;
        v. determinations concerning mental condition and competence under Article 4.4;
        vi. proceedings for contempt in which the Court may act summarily under Section 3.3.9;
        vii. sentencing under Articles 6.1 and 6.2, including probation violations under Section 6.1.11.2;
        viii. correctional violations under Article 6.3; and
        ix. extradition under Article 5.4.
4. Consistent with Subsections 1 through 3:
    a. the Parties may introduce evidence relevant to weight or credibility;
    b. if the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon—or, in the Court's discretion, subject to—the introduction of evidence sufficient to support a finding of the fulfillment of the condition;

c. if evidence that is admissible as to one Party or for one purpose—but not admissible as to another Party or for another purpose—is admitted, the Court, upon request, shall restrict the evidence to its proper scope;
d. if a record or part thereof is introduced by a Party, an adverse Party may require the introduction at that time of any other part or any other record that in fairness ought to be considered contemporaneously with it; and
e. an accused, by testifying upon a preliminary matter, does not become subject to cross-examination as to other issues in the case.

5. At any stage in the proceeding, a Court may take judicial notice of a fact that is not subject to reasonable dispute because it is generally known within the territorial jurisdiction of the Trial Court, or because it is capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned.
    a. Upon timely request, a Party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.
    b. In the absence of earlier notification, a request under Subsection 5.a may be made after judicial notice has been taken.
6. An erroneous court ruling on evidence by the Trial Court or a Collateral Court is reviewable on appeal if the error affected a substantial right and, as appropriate, an objection or ruling was made pursuant to this Section and Section 3.3.2.
    a. A substantial right is one where its deprivation is not a mere formality but instead, if allowed or permitted to stand:
        i. is likely to infringe upon a Party's rights under CoD Chapter 1 and under this Code; and
        ii. the resulting prejudice is likely to affect the verdict or outcome of the case.
    b. If the ruling is one admitting evidence, a timely objection or motion to strike must state the specific ground of objection, if such ground was not apparent from the context.
    c. If the ruling is one excluding evidence—the substance of which was made known to the Court by proffer or was apparent from the context within which questions were asked—the Court's ruling on the Party's evidentiary motion or proffer shall suffice to preserve the issue for appeal.
    d. If the Court makes a definitive pretrial ruling on the record admitting or excluding evidence, a Party need not renew an objection or offer of proof at trial to preserve a claim of error for appeal.
    e. On its own motion, the Court may take notice of an error affecting a substantial right even if it was not brought to the attention of the Trial Court Judge.
7. The Court shall number evidence that is submitted or produced for the case record.
8. The Court shall set by order the procedures for the secure storage, management, and access of the original form of evidence by an appointed Court Marshal.

§ 3.1.5. Privileges

1. Except as provided by Subsection 2, no person has a privilege to:
    a. refuse to be a witness;
    b. refuse to disclose any matter;
    c. refuse to produce any object or record; or

d. prevent another from being a witness or from disclosing any matter or producing any object or record.

2. Unless specifically provided by Sections 1.1.3.1.i, 1.1.8, 1.3.4, 1.3.5, 1.4.3.3.j, 1.5.4, 1.7.3.1.d, 1.8.1.2, and 3.1.3, or by other rule or exclusion under this Code, claims of privilege shall be governed by the common law as revealed in actual practice, court decisions, and persuasive commentary.
    a. Courts shall seek the common law first in Destiny sources, and then if necessary from elsewhere, favoring always the contemporary majority rule.
    b. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more likely true than not.
    c. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more likely true than not.
    d. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the Court, in making its determination, may review the material outside the presence of any other person.

§ 3.1.6. Witnesses and People at Risk

1. The Court or designated court staff shall maintain a list of the witnesses who appear before the Court and shall record, among other things, the following information:
    a. the date and time when testimony commenced and ended;
    b. the protective measures ordered, if any;
    c. the duration of the questioning by the participants and the Court;
    d. the names of participants who put questions to the witnesses;
    e. the evidence submitted by a Party or other participant, or produced upon order of the Court in the course of the testimony; and
    f. the evidence shown to witnesses during questioning by each participant or the Court.
2. The Parties or other participants shall provide the Court with the names of the witnesses they intend to call at the hearing at least one full working day before the hearing. They shall also provide all information about the location and time of the appearance of the witnesses before the Court.
3. A person seeking to act as an expert before the Court shall provide the Court with the following documentation:
    a. a detailed curriculum vitae;
    b. proof of the person's qualifications;
    c. an appropriate indication of the person's expertise in the relevant field; and
    d. where applicable, a statement of whether the person is included in any list of experts acting before any Court of Destiny or an official court of another jurisdiction.
4. The Court shall gather, monitor, and keep in a secure environment any information relating to witnesses, Victims who appear before it, and persons at risk—including, as necessary, the dependents of all such persons and accompanying support persons—and to potential or known threats.

§ 3.1.7. Computation and Enlargement of Time

1. In computing any period of time prescribed or allowed by this Code or any measure pursuant to it:
    a. the day of the act, event, or default from which the designated period of time begins to run shall not be included;
    b. the last day of the period so computed shall be included—unless it is a Saturday, a Sunday, or a customary holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a customary holiday; and
    c. when the period of time is less than seven days, intermediate Saturdays, Sundays, and customary holidays shall be excluded in the computation.
2. When an act is required or allowed to be done at or within a specified time by this Code, the Court for cause shown may at any time in its discretion:
    a. with or without motion or notice, order the period enlarged if a request is thus made before the expiration of the period originally prescribed or as extended by a previous order;
    b. upon motion made after the expiration of the specified period, permit the act to be done where failure to act was the result of excusable neglect; or
    c. order the period enlarged with the consent of all Parties.
3. Except as otherwise provided in this Code or permitted by the Court:
    a. a written motion—other than one which may be heard ex parte—and notice of the hearing thereof must be served not later than five days before the time fixed for the hearing; and
    b. opposing affidavits must be served not later than one day before the hearing.
4. Whenever a Party has the right or is required to do some act or to take some proceeding within a prescribed period after the service of a notice, and the notice or document is served by mail, three days shall be added to the prescribed period.
5. No portion of this Section shall apply to pre-trial detention, for which maximum time periods provided by the Code shall be applied strictly. If there is any ambiguity in such a period, it shall be interpreted in favor of the person detained.

3.2. Court Submissions

§ 3.2.1. Pleadings and Motions

1. The pleadings in a criminal proceeding are the Complaint pursuant to Section 2.1.2, and the pleas of not guilty or guilty pursuant to Section 4.1.2.
    a. Consistent with Section 2.1.2:
        i. each claim or defense should be simple, concise, and direct; and
        ii. a Party may set out two or more statements of a claim or defense alternatively (or hypothetically)—either in a single count or defense, or in separate ones—and if a Party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
    b. Pleadings must be construed so as to do justice.
2. A request for a court order must be made by motion.
    a. Except when made during a trial or hearing, a motion must be in writing unless the Court permits the Party to make the motion by other means.
    b. A motion shall contain a concise statement of the precise relief requested and shall state the specific factual grounds and specific legal authority in support thereof. If necessary or required by this Code, a motion must be supported by affidavit.
3. Unless otherwise ordered by the Court, each Party may file and serve a response—and the moving Party may file and serve a reply, which shall be directed only to matters raised in a response. If no response is filed, the motion shall be deemed submitted on the record before the Court.

§ 3.2.2. Court Standards

1. The Court shall notify the Parties, as soon as is practicable after formation, of the Court's standards for:
    a. the form of pleadings, motions, and other submissions;
    b. methods of filing submissions with the Court;
    c. the Court's choice of Registry;
    d. norms and methods for notifying other Parties; and
    e. methods for service of process.
2. In determining the standards under Subsection 1, the Court must consider:
    a. best practices and norms of standardization observed and expected by other Courts and the legal profession;
    b. the interests of the Parties in maintaining efficient and cost-effective procedures; and
    c. fundamental due process—including notice and opportunity to be heard, transparency and comprehensibility of the process, and other considerations of fairness and procedural justice.
3. By presenting to the Court a pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an Attorney or unrepresented Party (e.g., the Defendant under Section 1.5.5) certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

a. it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
b. the claims, defenses, and other legal contentions are warranted by existing law and persuasive case precedents, by comparable persuasive foreign precedents, or by a nonfrivolous argument in support of the Party's interpretation of law;
c. the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
d. the denials of factual contentions are justified on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

§ 3.2.3. Disclosure Statement

1. A legal person that seeks to be a Party in a case, or an Intervenor pursuant to Section 4.2.5, must:
    a. file a statement identifying any legal or natural person—or another legal jurisdiction or its representatives—that has a beneficial ownership stake of 10% or more, or that otherwise effectively directs or operates the Party (or proposed Party) in question; and
    b. promptly file a supplemental statement if any required information changes.

§ 3.2.4. Service of Process

1. No service is required on a Party who is in default for failing to appear—but a pleading that asserts a new claim for relief against such a Party must be served on that Party under this Section.
2. If an action is begun by seizing property and no person is or need be named as a Defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.
3. Prior to the docketing of a case pursuant to Section 2.1.1.3.a, or when otherwise no process has yet been authorized under Section 3.2.2:
    a. if a Party is represented by an Attorney, service must be made on the Attorney unless the Court orders service on the Party; or
    b. if a Party is unrepresented by an Attorney, service may be made by:
        i. handing it to the person;
        ii. leaving it in a conspicuous place, or in the care of a person of suitable discretion, at the person's dwelling or place of work;
        iii. mailing it to the person's last known address, in which event service is complete upon mailing; or
        iv. delivering it by any other means that the person consented to in writing, in which event service is complete when the person making service delivers it to the designated agent or agency.

3.3. Court Proceedings

§ 3.3.1. Fair and Orderly Proceedings

1. The Trial Court Judge shall control the proceedings of the Court, including the timing, manner, and length of argument.
2. The Court shall dispose promptly of the business before it.
    a. The Court has the obligation to avoid delays, continuances, and extended recesses, except for good cause.
    b. The Court should require punctuality and optimum use of working time from all persons engaged in the case—with the Trial Court Judge serving as an exemplar of punctuality, the observance of scheduled court hours, and the use of working time.
    c. The Court should respect the personal and professional demands on the lives of counsel, the Defendant, Victims, and witnesses, and it should be sensitive to these needs in scheduling and using court time.
3. The Court shall seek to ensure that the status of persons detained pending formal charge, trial, or sentence is monitored.
    a. The Court shall respond promptly to specific inquiries from persons held in custody and, if warranted, shall make inquiries or take other action.
    b. The Court shall take appropriate corrective action when required.

§ 3.3.2. Objections and Rulings

1. The Court shall respect the obligation of counsel to present objections to procedures and to admissibility of evidence; to request rulings on motions; to make offers of proof; and to have the record show adverse rulings and reflect conduct of the Trial Court Judge that counsel considers prejudicial.
    a. Objections, motions, statements of grounds, any argument and discussion, the ruling of the Court, and the reasons given by the Court for its ruling, shall be made part of the record consistent with the level of confidentiality under Section 3.1.3.
    b. Subject to more specific provisions of this Code, the Court shall issue a timely decision on objections, motions, and other requests.
2. When a court ruling or order is made or sought, a Party may preserve a claim of error by informing the Court of the action the Party wishes the Court to take, or by the Party's objection to the Court's action and the grounds for that objection.
    a. If a Party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that Party.
    b. Once the Court rules definitively on the record, either before or at trial, a Party need not renew an objection or offer of proof to preserve a claim of error for appeal.
3. A Party may move to reconsider a ruling by the Court and, if denied, may request that the ruling be certified for interlocutory appeal under Section 5.2.3.

§ 3.3.3. Ex Parte Communications

1. Under this Code, “ex parte” means a proceeding, motion, or communication made to a Court by or on behalf of only one Party—without notice to, or participation by, other Parties.
2. The Court must not allow any person to discuss a pending case ex parte, except:
    a. after reasonable notice to all other Parties and with their confirmed consent, for purposes of mediating or settling pending matters;
    b. after reasonable notice to all other Parties and after providing a reasonable opportunity to object, for purposes of receiving the advice of a disinterested legal expert; or
    c. for scheduling, administrative, or emergency purposes that do not address substantive matters, where the Court reasonably believes that no Party will gain a substantive, procedural, or tactical advantage as a result of the ex parte communication.
3. If the Court receives an ex parte communication in violation of Subsection 2 or engages in an ex parte communication under Subsection 2.c., the Court must promptly note the communication on the record, notify all other Parties of its subject matter, and allow them an opportunity to respond.

§ 3.3.4. Decorum, Appearance, and Security

1. The Court—preferably before a criminal trial or at its beginning—shall prescribe and make known the ground rules relating to conduct that the Parties, witnesses, and others will be expected to follow in the courtroom, and that are not set forth in this Code.
2. The Court shall require that every proceeding before it be conducted with unhurried and quiet dignity, and should aim to establish such physical surroundings as are appropriate to the administration of justice. Movement in the courtroom during the proceedings may be limited or completely prohibited except during breaks or recesses. Disruption of orderly proceedings should not be permitted.
3. The Trial Court Judge's appearance, demeanor, and statements shall reflect the dignity of the judicial office and enhance public confidence in the administration of justice. The Court shall require similar conduct of court staff and others subject to the Court's direction and control.
4. The Court shall make known before trial that, when it is in session, no colloquy, argument, or discussion directly between opposing counsel in the presence of the Court will be permitted on matters relating to the case—except that, if a brief conference between counsel might tend to expedite the trial, the Court shall grant them leave to confer.
5. The Court shall endeavor to maintain secure court facilities. In order to protect the dignity and decorum of the courtroom, such security shall be accomplished in the least obtrusive and disruptive manner, with an effort made to minimize any adverse impact.

§ 3.3.5. Proceedings in and outside a Courtroom

1. To the extent possible, the Court shall maintain a preference for live public proceedings in a safe, accessible courtroom with all Parties physically present.

2. The Court may permit remote attendance at its discretion, provided that:
    a. the Court believes effective communication, court decorum, and the completeness and accuracy of the record will be maintained;
    b. in the case of the Defendant:
        i. he knowingly, intelligently, and voluntarily consents; and
        ii. provisions are made to allow for confidential communications between the Defendant and Defense Counsel;
    c. when the right to counsel applies, such procedures shall not result in a situation where only the Prosecutor or Defense Counsel is physically present before the Court; and
    d. it may not be used for felony sentencing.

§ 3.3.6. Presence of the Defendant

1. The Defendant has the right to be present at the arraignment and at every stage of the trial, including the return of the judgment and sentencing.
2. Except as provided in Subsection 3, a Defendant may waive the right to be present at any proceeding in the following manner:
    a. with the consent of the Court:
        i. by an understanding and voluntary waiver in open court; or
        ii. by a written consent executed by the Defendant and by the Defendant's Attorney of record, filed in the case; or
    b. by the Defendant's absence from any proceeding, upon the Court's finding that such absence was voluntary and constitutes an understanding and voluntary waiver of the right to be present—which it may infer if the Defendant:
        i. had notice of the time and place of the proceeding;
        ii. had notice of the right to be present at it; and
        iii. was warned that the proceeding would go forward in the Defendant's absence should he fail to appear.
3. A Defendant may not waive the right to be present if he is not represented by Defense Counsel at the proceeding at which the Defendant is absent—except:
    a. in the case of a misdemeanor punishable by imprisonment for a term not exceeding 3 months, or a less serious offense;
    b. in proceedings conducted after the Defendant has been adjudicated guilty; or
    c. when the Defendant has waived the right to counsel.
4. If a Defendant is not present at the trial, at any stage thereof, or at any other proceeding—and the Defendant's right to be present has not been waived or the absence has not been excused—the Court by order:
    a. may direct the Court Marshal to bring the Defendant forthwith before the Court for the trial or proceeding; and
    b. after reasonable apprehension efforts have failed, may declare the Defendant to be voluntarily absent and to have waived the right to be present.
5. If the Defendant waives the right to be present, the trial may proceed to completion—including returning the judgment and sentencing—during the Defendant's absence.
6. A Defendant who engages in disruptive or disorderly conduct such that the trial cannot proceed in an orderly manner—after having been warned by the Court that such conduct will result in the Defendant's expulsion from a proceeding—shall forfeit the right to be present at that proceeding.

a. Absent exigent circumstances, the removed Defendant should be required to be present in the court building while the trial is in progress. The Court shall employ every practicable means:
    i. to enable a removed Defendant to hear, observe, or be informed of the further course of the proceeding; and
    ii. to enable the Defendant to consult with Defense Counsel at reasonable intervals.
b. At appropriate intervals, a removed Defendant should be offered on the record an opportunity to return to the courtroom upon assurance of good behavior.
    i. The offer to return need not be repeated in open court each time.
    ii. Absent exigent circumstances, the Court shall grant a removed Defendant's request to return to the courtroom upon the Defendant's personal assurance of good behavior.
    iii. At the Court's discretion, any subsequent disruptive conduct on the part of the Defendant may result in removal without additional warning.
c. If a Defendant who is permitted to proceed without the assistance of counsel pursuant to Section 1.5.5.3, engages in conduct so disruptive that the trial cannot proceed in an orderly manner—including disobeying or failing to respond to judicial orders or rulings—the Court may, after appropriate warnings, revoke the permission and require representation by counsel.
    i. When appropriate, the trial shall be recessed to allow the Defendant to retain counsel, and for such Defense Counsel to make the necessary preparations to go forward with the trial.
    ii. If the Defendant fails to timely retain counsel, the Court shall summon a Collateral Court pursuant to Section 5.3.1.1 to appoint one.

§ 3.3.7. Presence of Witnesses and Spectators

1. The Court may—and at the request of either Party, shall—exclude prospective witnesses from the courtroom prior to their giving testimony.
    a. Once a witness has testified on direct examination and has been made available to all Parties for cross-examination and excused by the Court, the witness shall be allowed to remain in the courtroom unless the Court finds, upon application of a Party, that the presence of the witness would be prejudicial to a fair trial.
    b. As necessary or at the request of either Party, the Court shall direct witnesses not to communicate with each other concerning the case until all have testified.
2. All proceedings shall be open to the public unless the Court finds, upon motion by a Party, that an open proceeding presents a real and present danger to the Defendant's right to a fair trial.
    a. In prosecutions for rape or sexual assault—or that involve a person under 18 years of age or a vulnerable Victim—the Court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial.
    b. Notwithstanding the foregoing, the Victim has the right to be present throughout all criminal proceedings.

3. The Court shall generally allow attending members of the public to use recording or broadcasting equipment to make the proceedings available to those not attending—provided that:
    a. such persons notify the Court of their intentions 48 hours prior to commencement of proceedings, or such other shorter time as the Court may allow;
    b. the Court may, on its own motion or on the written request of a Party, limit or end any such recordings or broadcasting if there is reasonable cause to believe it may jeopardize:
        i. the orderly procedure, decorum, or dignity of the Court; or
        ii. the rights of Parties or witnesses, or the fair administration of justice; and
    c. the Court shall suspend or prohibit such recording or broadcasting in relation to:
        i. in camera proceedings or off-the-record conferences in the courtroom;
        ii. cases involving child neglect, domestic abuse, or juvenile Defendants; and
        iii. witnesses who are under 18 years of age, who are subject to personal protection, or who are the Victims or families of Victims of sex crimes.
4. Any person who engages in conduct that disturbs the orderly process of the trial may be admonished or excluded—and if such conduct is intentional, may be held liable for contempt pursuant to Section 3.3.9, or may be prosecuted for contempt.
    a. Any person whose conduct in a criminal proceeding constitutes a threat or menace to the Judge, Parties, Attorneys, witnesses, court staff, members of the public—including the Defendant's or Victim's family—or otherwise endangers a fair trial, may be removed from the courtroom.
    b. When a Victim or a member of a Victim's or a Defendant's family is removed from the courtroom during trial, such person should ordinarily be allowed to return upon assurance of good behavior.
5. If the proceedings are ordered closed, in whole or in part, both the Defendant and the Prosecutor shall nevertheless be entitled to the presence of one designated investigator at counsel table. A complete record of any closed proceedings shall be kept and, subject to Section 3.1.3, made available to the public following the completion of trial or disposition of the case without trial.

§ 3.3.8. Sanctions

1. The Court has the inherent power to protect the integrity and fair administration of the criminal justice process by imposing any of the following sanctions on any person present:
    a. a verbal reprimand;
    b. exclusion from the courtroom or revoking the privilege to record or broadcast proceedings pursuant to Section 3.3.7;
    c. limitations on participation, such as restricting the questioning of witnesses or the ability to address the Court;
    d. in the case of an Attorney, suspension from practicing before the Court; or
    e. contempt of court pursuant to Section 3.3.9.

2. If the Court determines to impose sanctions for misconduct affecting the trial, the Court should ordinarily impose the least severe sanction appropriate to correct the abuse and deter repetition.
3. In weighing the severity of a possible sanction for disruptive courtroom conduct to be applied during the trial, the Court should consider the risk of further disruption, delay, or prejudice that might result from the character of the sanction or the time of its imposition.

§ 3.3.9. Contempt of Court

1. A Criminal Court may summarily impose sanctions on a person for his contempt of court if:
    a. the Court has personally perceived the relevant conduct and has personal knowledge of the identity of the person committing it;
    b. the contempt has interrupted the order of the Court or interfered with the dignified conduct of the Court's business;
    c. it is clear from the identity of the person and the character of his acts that the disruptive conduct was intentionally contemptuous; and
    d. the conduct warranting the sanction was preceded by a clear warning that such conduct was impermissible and that specified sanctions might be imposed for its repetition.
2. The Court should—as soon as practicable after it is satisfied that courtroom misconduct requires contempt proceedings—inform the alleged contemnor of the Court's intention to institute such proceedings, and give the alleged contemnor notice of the nature of the relevant conduct.
3. The Court shall afford the alleged contemnor an opportunity—consistent with the circumstances then existing—to present exculpatory or mitigating evidence, and to make argument relevant to liability and sanction.
4. If the Court summarily finds and announces on the record that contempt has been committed, the Court may defer imposition or execution of sanctions until the conclusion of the proceeding during which the contempt was committed. If the trial has begun, the Court should consider deferring adjudication of contempt for courtroom misconduct of the Defendant, an Attorney, or a witness until after the trial—and it should defer such a proceeding unless prompt punishment is imperative.
5. The Judge before whom courtroom misconduct occurs should refer the matter to another Judge appointed pursuant to Article 1.2, whenever the Judge has any doubt about her ability to preside over the matter impartially, or if the Judge's objectivity can reasonably be questioned. Absent grounds for case excusal or removal under Sections 1.1.4 and 1.1.5:
    a. the referring Judge shall continue to serve as the Court in the underlying criminal case; and
    b. the appointed Judge shall serve as the Court for the sole purpose of contempt proceedings under this Section, at the close of which such appointment shall terminate.
6. Either before sanctions are imposed or promptly thereafter, the Court shall issue a written order:
    a. stating the Court’s finding that a contempt has been committed;

b. detailing the evidentiary facts known to the Court from a Judge's own personal knowledge concerning the conduct constituting the contempt and, regarding any relevant evidentiary facts not so known, the basis of the Court's findings; and
c. announcing the sanction imposed for the contempt.

7. A Contemnor may seek review by appeal pursuant to Section 5.2.3. The Court’s deferral decision pursuant to Subsection 4 is not appealable until such time as the sanctions are imposed or executed.
8. A sanction under this Section may not exceed a fine of XCD 25,000, incarceration for 30 days, or both.

4. Pre-Trial

4.1. Arraignment and Detention

§ 4.1.1. Initial Appearance and Arraignment

1. Upon service of a Summons, execution of an arrest Warrant, or an arrest without a Warrant, the case shall proceed to an initial appearance, at which the Court shall:
    a. ascertain the Defendant's true name, current residence address, and, if different, current mailing address—and amend the formal charge if necessary to reflect this information—instructing the Defendant to notify the Court promptly of any change of address;
    b. if the Defendant has been arrested without a Warrant, determine whether the requirements in Section 2.3.1 have been met;
    c. ensure the Defendant has been provided a copy of the Complaint;
    d. inform the Defendant that:
        i. he has the right to remain silent and that any statements made may be used against the Defendant;
        ii. if unrepresented, he has the right to assistance of an Attorney retained at the Defendant’s own expense;
        iii. he has the right to communicate with Defense Counsel and family or friends, and that reasonable means will be provided to enable the Defendant to do so; and
        iv. he may be held liable for the Prosecutor’s reasonable legal costs, as well as the costs of any sentence, including custody;
    e. arraign the Defendant on the Complaint per Subsection 2;
    f. if the Defendant is in custody, hold a detention hearing pursuant to Section 4.1.3;
    g. set a date and venue for the Trial to begin, which shall be within 30 days except by agreement of the Parties; and
    h. address any other scheduling matters—including dates for further pretrial proceedings and any important deadlines, such as for pretrial motions.
2. The arraignment must be conducted in open court and must consist of:
    a. determining whether the Defendant is represented by an Attorney—and if not, advising the Defendant under Subsection 1.d.ii, and providing a reasonable amount of time for the Defendant to obtain counsel;
    b. ensuring the Defendant is informed of the charges—including reading the Complaint to the Defendant or stating to the Defendant the substance of the charge—unless such reading is waived by Defense Counsel;
    c. asking the Defendant to plead to the Complaint pursuant to Section 4.1.2;
    d. reviewing the bond previously set, if appropriate; and
    e. advising the Parties in attendance of any dates set for further proceedings and other important deadlines, such as for pretrial motions.
3. Defendants who are jointly charged may be arraigned separately or jointly at the discretion of the Court. If co-Defendants are arraigned jointly and charged with the same offense, the Complaints need be read only once, with stated identification of each Defendant.

§ 4.1.2. Pleas

1. A Defendant may plead not guilty or guilty to any or all charges.
    a. If a Defendant fails or refuses to plead—or if a guilty plea is not accepted—the Court shall enter a plea of not guilty and set the case for trial.
    b. If a Defendant is not present at arraignment and has not waived appearance, the Court may, in addition to forfeiture of bail, issue a Warrant to bring the Defendant before the Court.
    c. If a Defendant's guilty plea is accepted under Subsection 3, the Court shall enter judgment pursuant to Section 5.1.4 and proceed to sentencing under Section 5.1.5 and Articles 6.1 and 6.2.
2. A Defendant charged with the commission of a felony, who wishes to plead guilty, is required to plead personally. At its discretion, the Court may require the personal appearance of a Defendant charged with a misdemeanor, who wishes to plead guilty.
3. When the Defendant wishes to plead guilty, it is the duty of the Trial Court to address the Defendant to inquire and determine the following on the record:
    a. that the plea is voluntarily and intelligently made—where a plea induced by force, threats, or promises is involuntary—and that there is a factual basis for the plea;
    b. that the Defendant understands:
        i. the nature of the charge and the material elements of the offense to which the plea is offered;
        ii. the mandatory minimum penalties, if any, and the maximum possible penalties provided by law;
        iii. if applicable, the fact that the sentence may run consecutively to or concurrently with another sentence or sentences;
        iv. the fact that the Defendant has the right to plead not guilty—and to persist in such a plea if it has already been made—or to plead guilty;
        v. the fact that the Defendant has the right to remain silent and may not be compelled to testify or give evidence against himself—but also has the right, if the Defendant wishes to do so, to testify on his own behalf;
        vi. the fact that, by entering a plea of guilty, the Defendant waives the rights:
            1. to confront witnesses against the Defendant;
            2. to cross-examine witnesses or have them cross-examined in the Defendant's presence;
            3. to testify and present evidence and witnesses on the Defendant's own behalf; and
            4. to have the aid of compulsory process in securing the attendance of witnesses;
        vii. the fact that, if the Defendant is not represented by an Attorney, the Defendant has the right to retained counsel at every stage of the proceedings;
        viii. the fact that, if the plea of guilty is accepted by the Court, there will not be a further trial on the issue of the Defendant's guilt;

ix. the fact that by pleading guilty the Defendant waives the right to review of the proceedings by way of direct appeal, and may seek review only by filing a motion for collateral relief;
x. the Prosecutor's right, in a prosecution for perjury or false statement, to use against the Defendant any statement that he gives under oath; and
xi. the fact that the Defendant may be held liable for all reasonable legal costs of the prosecution and of sentencing, including custody; and

c. that the Defendant has an opportunity to state any objections to Defense Counsel, or to the manner in which Defense Counsel has conducted or is conducting the defense.

§ 4.1.3. Detention Hearing

1. A Defendant charged by Complaint and in custody may demand a detention hearing, which shall occur at the Defendant's initial hearing unless:
    a. the Complaint has been dismissed;
    b. the hearing is subsequently waived; or
    c. the hearing is postponed upon a finding that circumstances exist justifying delay of no more than 72 hours—pursuant to a written order detailing the reasons for the finding and giving the Parties prompt notice thereof.
2. The Defendant shall be released on his own recognizance if a detention hearing is not held as required by Subsection 1.
3. At a detention hearing, the Court shall determine probable cause per Section 2.2.4, and the conditions for release, if any, under Sections 4.1.4 through 4.1.6.
    a. All Parties shall have the right to cross-examine the witnesses testifying and, subject to the provisions herein, introduce evidence. Only evidence that is relevant to these questions shall be admitted.
    b. At the close of the Prosecutor's case, including cross-examination of prosecution witnesses by the Defendant, the Court shall determine and state for the record, or in open court, whether the Prosecutor's case establishes probable cause.
    c. The Defendant may then make a specific offer of proof, including the names of witnesses who would testify or produce the evidence offered. The Court shall allow the Defendant to present the offered evidence, unless the Court determines that it would be insufficient to rebut the finding of probable cause.
4. Unless otherwise ordered by the Court for good cause shown, the Prosecutor and Defendant shall have the aid of compulsory process to secure the attendance of witnesses pursuant to Sections 2.2.3, 2.2.8, 2.4.5, 4.3.3.8, and 4.3.4.9.
5. The evidentiary findings of the Court may be based on hearsay, in whole or in part.
6. The Complaint may be amended at any time to conform to the evidence, unless prejudice would accrue to the Defendant's substantial rights under Section 4.2.4.1.
7. If, from the evidence, it appears that there is no probable cause to believe that the alleged offense has been committed or that the Defendant committed it, the Defendant shall be discharged from custody.

§ 4.1.4. Pretrial Release

1. Subject to Subsection 2, any Defendant charged with:

a. a felony for which the prescribed maximum term of imprisonment is less than 7 years, or a less serious offense—including misdemeanors—may be released pending or during trial on the Defendant's own recognizance, or on an appearance bond set in an amount no higher than the maximum fine for the underlying offense;
b. a felony for which the prescribed maximum term of imprisonment is not less than 7 years and less than 25 years may be released pending or during trial, upon the Defendant's posting an appearance bond set in an amount no higher than the maximum fine for the underlying offense—along with conditions imposed pursuant to Section 4.1.5—unless the Court determines that:
    i. such bond and conditions will not reasonably assure the Defendant's appearance as required; or
    ii. the Defendant's being at large will pose a real and present danger to others;
c. a felony for which the prescribed maximum term of imprisonment is not less than 25 years, other than imprisonment for life, is presumptively ineligible to be released pending or during trial, except upon an affirmative court finding by clear and convincing evidence that:
    i. posting an appearance bond set in an amount no less than the maximum fine for the underlying offense—along with conditions imposed pursuant to Section 4.1.5—will guarantee the Defendant’s appearance as required; and
    ii. the Defendant’s being at large does not pose a risk of danger to others; and
d. a felony punishable by imprisonment for life is presumptively ineligible for release pending or during trial, except upon the findings required by Subsection 1.c.

2. If a Defendant is charged with two or more offenses, any appearance bond shall be based on the most serious offense charged. As appropriate, such appearance bond may be increased to account for additional offenses. Where no fine or no limit is prescribed for the underlying offense, its maximum fine under Subsection 1 is XCD 125,000.
3. In making determinations under this Section, the Court may take into account the following:
    a. the age, background, family ties, relationships, and circumstances of the Defendant;
    b. the Defendant's reputation, character, and health;
    c. the Defendant's prior criminal record—including prior releases on his own recognizance or on appearance bonds—and other pending cases;
    d. the identity of responsible members of the community who will vouch for the Defendant's reliability;
    e. violence or lack of violence in the alleged commission of the offense;
    f. the nature of the offense charged, the apparent probability of conviction, and the likely sentence—insofar as these factors are relevant to the risk of nonappearance;
    g. the type of weapon used;
    h. threats made against witnesses or Victims;
    i. the value of property taken during the alleged commission of the offense;

j. whether the property allegedly taken was recovered, and the damage or lack of damage to property allegedly taken;
k. residence of the Defendant—including consideration of real property ownership—and length of residence in the Defendant's place of domicile;
l. consideration of the Defendant's employment status and history, and the location of Defendant's current employment, if any; and
m. any other fact or circumstance bearing on the risk of nonappearance, or on the danger to others or to the public.

4. For cases under Subsection 1.b, if it is determined that the Defendant is not eligible for release on posting an appearance bond alone, the Court may impose the least onerous condition or conditions contained in Section 4.1.5 that reasonably comply with Subsection 1.b.
5. For cases under Subsection 1.c or 1.d, the Court must impose any lawful condition or conditions contained in Section 4.1.5 that are necessary to meet the requirements of Subsection 1.c.
6. Under this Section:
    a. a release on the Defendant's "own recognizance" means release without the requirement of an appearance bond;
    b. an "appearance bond" is a security deposited with the Court to secure the Defendant's release, which:
        i. may be in the form of any asset or medium of exchange accepted by the Court;
        ii. may be held directly or on promise, as determined by the Court; and
        iii. if the Defendant fails to appear for any proceeding as ordered by the Court—and after due consideration of any mitigating circumstances—the Court may order the appearance bond forfeited and issue a Warrant for the Defendant's arrest; and
    c. at any time that the Court finds there is no further need for an appearance bond, the Court shall exonerate the bond and order the return of any security deposited with the Court.

§ 4.1.5. Conditions of Release

1. Every order of release under Sections 4.1.4 and 4.1.6 shall contain the conditions that the Defendant:
    a. appear to answer and to submit to the orders and process of the Court having jurisdiction of the case;
    b. refrain from committing any criminal offense; and
    c. promptly notify the Court of any change of address.
2. An order of release may include any one or more of the following conditions reasonably necessary to secure the Defendant's appearance or to protect the public:
    a. execution of an appearance bond in an amount specified by the Court;
    b. placing the Defendant in the custody of a designated person or organization agreeing to supervise the Defendant;
    c. restrictions on the Defendant's travel, associations, or place of abode during the period of release;
    d. restrictions on the Defendant's direct or indirect contact with any specified person or persons;

e. suspension of the Defendant's authority to possess, carry, or access arms, and relinquishment of such arms to the Court Marshal (in return for a written inventory and receipt) if the Court believes they cannot otherwise be lawfully so secured as to ensure the Defendant's inability to access them;
f. return to custody after specified hours; or
g. any other conditions that the Court deems reasonably necessary.

3. The Court shall inform the Defendant of the possible consequences of their violation, and that a Warrant for the Defendant's arrest may be issued immediately upon report of a violation.

§ 4.1.6. Review, Modification, and Revocation

1. Upon motion of the Defendant or on its own motion, the Court may, for good cause shown, order the Defendant's release subject to conditions under Section 4.1.5, or modify any existing conditions of release—but only after providing the Parties an adequate opportunity to respond to the proposed release or modification of release conditions.
2. Upon motion of the Prosecutor or on its own motion, the Court may issue a Summons or arrest Warrant to secure the Defendant's presence in court.
    a. The motion must state with particularity:
        i. the facts or circumstances constituting a material breach of the conditions of release;
        ii. that material misrepresentations or omissions of fact were made in securing the Defendant's release; or
        iii. that revocation is otherwise required by law.
    b. A copy of the motion shall be served with the order or Warrant, and a hearing shall be held on the motion without undue delay—and in no event later than four hours after the arrest of the Defendant released—as provided in Section 2.3.2.
3. If, after a hearing on the matters set forth in the motion, the Court finds that there is probable cause to believe the Defendant released has not complied with or has violated the conditions of release—or that a preponderance of evidence suggests material misrepresentations or omissions of fact were made in securing the Defendant's release—the Court may modify the conditions or revoke the release.
4. Upon acquittal, dismissal, exoneration of the appearance bond, or any other order terminating a condition imposed under Section 4.1.5.2.e, the Court shall order the suspension lifted, the notation removed, and the arms returned to the Defendant or the transfer reversed.

§ 4.1.7. Disposition of Seized Property

1. A person aggrieved by an unlawful search and seizure may move the Court for the return of the property seized on the ground that the person is entitled to lawful possession of the property that was illegally seized.
    a. The Court shall receive evidence on any issue of fact necessary to the decision of the motion.
    b. If the motion is granted, the property shall be restored.

2. When property is lawfully seized pursuant to a search Warrant, it shall be retained under the direction of the Court. If seized property is not to be used as evidence, or is no longer needed as evidence, it shall be returned to the owner—unless:
    a. under this Code there is no lawful opportunity for ownership of the item seized, such as contraband, in which event the Court shall order the item destroyed or disposed of properly; or
    b. the original owner may not lawfully own the property under this Code or does not claim it within six months of the Court's notice that it is no longer required as evidence, in which event the Court shall dispose of the property by public auction.
3. When property is lawfully seized pursuant to a forfeited bond and is a non-monetary asset, the Court shall dispose of the property by public auction.
4. If a public auction is required by Subsection 2 or 3, the Court may nonetheless order the property destroyed—or may otherwise order such disposition as it deems appropriate—if it concludes that the cost of a public auction would probably exceed the highest bid.
5. The Court may—on its own motion or the motion of any interested person—render an ex parte order for the disposition of property as provided herein. Otherwise, the Court, in its discretion, may require a motion from the apparent owner or the person in possession of the property at the time of the seizure.

4.2. Motions

§ 4.2.1. Making Motions

1. A Party may raise by pretrial motion any defense, objection, or request that the Court can determine without a trial of the general issue.
2. Absent good cause shown, the following must be raised before trial:
    a. a motion alleging a defect in instituting the prosecution;
    b. a motion alleging a defect in the Complaint—but at any time while the case is pending, the Court may hear a claim that the Complaint fails to invoke the Court's jurisdiction or to state an offense;
    c. a motion for a written statement from the Prosecutor (Bill of Particulars), detailing specific facts of the charges—such as time, place, and acts—to clarify the Complaint and aid in preparing a defense;
    d. a motion challenging the facial validity of a coercive measure or the lawfulness of its execution;
    e. a motion regarding the admissibility of evidence;
    f. a motion to sever charges or Defendants;
    g. a motion for discovery; and
    h. a motion for a change of venue.
3. On motion of either Party or on its own motion, the Court may order that the question of the admissibility of any specified evidence be submitted for pre-trial determination as if a motion pursuant to Subsection 2.e had been filed by the Party opposed to the introduction of the evidence.
4. For good cause shown, the Court may order that any Party, Attorney, or witness refrain from asking certain questions, giving certain answers, or in any manner directly or indirectly referring to or alluding to any otherwise inadmissible fact, matter, or circumstance during the course of trial.
5. At the arraignment or upon the cause being set for trial—or as soon thereafter as practicable—the Prosecutor may notify the Defendant of its intent to use specified evidence at trial, in order to afford the Defendant an opportunity to object before trial under Subsection 2.e.
6. At the arraignment or upon the cause being set for trial—whichever occurs first, or as soon thereafter as practicable—the Defendant may, in order to have an opportunity to move to suppress evidence under Subsection 2.e, request notice of the Prosecutor's intent to use at trial in the case-in-chief any evidence that the Defendant may be entitled to discover under Section 4.3.3.

§ 4.2.2. Motion Deadlines and Hearings

1. The Court may—at the arraignment or upon the cause being set for trial, or as soon thereafter as practicable—set a deadline for the Parties to make pretrial motions. The Court may also schedule a motion hearing.
2. Upon request of any Party, or on its own initiative, the Court may set any motion for hearing. The Court may limit or deny oral argument on any motion.
3. It is the duty of the movant, when a motion or other pleading is filed—including a motion for a new trial—to pursue the motion to hearing and decision. Failure to pursue a

pretrial motion to hearing and decision before trial is deemed an abandonment of that motion—which, in the interests of justice, may be heard after the commencement of trial solely at the discretion of the Court.

4. A Party waives any defense, objection, or request under Section 4.2.1.2 that is not raised by the deadline the Court sets pursuant to Subsection 1, or by any extension the Court provides. For good cause, the Court may grant relief from the waiver.

§ 4.2.3. Rulings on Motions

1. The Court must decide every pretrial motion before trial unless it finds good cause to defer a ruling.
    a. The Court must not defer ruling on a pretrial motion if the deferral will adversely affect a Party's right to appeal.
    b. When factual issues are involved in deciding a motion, the Court must state its essential findings on the record.
2. If the Court grants a motion to dismiss based on a defect in instituting the prosecution or in the charge, the Court shall:
    a. order the Defendant released;
    b. on motion of the Prosecutor—and pending the filing of a new charge—order the Defendant's pre-trial release continued; or
    c. order the Defendant held in custody for a reasonable specified time not to exceed 72 hours.
3. If the Court grants a motion for a Bill of Particulars under Section 4.2.1.2.c, the Court shall order the Prosecutor to furnish facts supplemental to those contained in the Complaint that are necessary to apprise the Defendant of the charge with sufficient precision to enable him:
    a. to prepare his defense;
    b. to avoid unfair surprise at trial; and
    c. to preclude a subsequent prosecution for the same offense in violation of CoD 1.11.6 and Section 1.5.3.
4. Under Section 4.2.1.2.d, if the Court finds that the acquisition of evidence was unlawful and in violation of the moving Party’s rights, it shall grant the motion and assess costs and restitution for the unlawful action pursuant to Section 6.1.10.
5. Notwithstanding Subsection 4:
    a. evidence shall not be declared inadmissible at trial pursuant to Section 4.2.1.2.e unless the Court finds that the evidence is:
        i. unreliable or irrelevant under Section 3.1.4;
        ii. privileged under Section 3.1.5; or
        iii. coerced under CoD 7.1.2.4; and
    b. any seized evidence that is declared inadmissible under Subsection 5.a shall be restored to its owner or last possessor, unless otherwise subject to lawful detention or disposition pursuant to Section 4.1.7.
6. The running of any time limit shall be tolled by the issuance of the Complaint until such time as the Court grants a motion to dismiss based on a defect in the commencement of the proceedings or in the charge—unless in granting the motion, the Court finds that:
    a. the Prosecutor has not made a good faith effort to proceed properly; and
    b. the Defendant has been prejudiced by any resulting delay.

§ 4.2.4. Amendment of Complaint

1. After commencement of trial, the Court may permit the Prosecutor to amend the Complaint at any time before judgment or other dispositive ruling (e.g., case dismissal)—so long as no additional or different criminal offense is charged, and no prejudice thereby accrues to the Defendant's substantial rights, as defined in Section 3.1.4.6.a.
    a. Amendments shall be allowed only if the Defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.
    b. The Prosecutor may charge an additional or different offense only with the express consent of the Defendant.
    c. Given the duties in prosecuting a case—especially the charging requirements of Section 1.4.3.3.d through 1.4.3.3.f, and the special duty of notification and consultation pursuant to Sections 1.4.2.2 and 1.4.3.5—the Prosecutor may dismiss the Complaint or any charge only with leave of the Court, and subject to the appointment of a new Prosecutor pursuant to Article 1.4.
2. The Defendant must be granted any extension of time, adjournment, or continuance reasonably necessitated by an amendment.
3. Defects in the Complaint shall be raised by proper motion.
    a. A motion to dismiss may be based on the legal insufficiency of the Complaint or a defect in it, or on the failure of the Complaint to charge an offense.
    b. No charge shall be deemed invalid—nor shall the trial, judgment, or other proceedings thereon be stayed, arrested, or in any manner affected—for any defect in the charge that does not tend to prejudice the substantial rights of the Defendant upon the merits.

§ 4.2.5. Intervention

1. On timely motion, the Court should permit anyone to intervene who:
    a. under Section 1.6.1 is a Victim of an offense:
        i. which has been charged in the Complaint; or
        ii. for which double jeopardy will attach upon trial of the Complaint;
    b. after a motion has been made to dismiss the Complaint or any charge pursuant to Sections 1.4.4.1, 2.1.2.2, or 4.2.4:
        i. has standing to prosecute the case under Section 1.4.1.1; and
        ii. seeks to do so consistent with the duties in Section 1.4.3, including the charging requirements in Section 1.4.3.3.d through 1.4.3.3.f; or
    c. claims an interest relating to the property or transaction that is the subject of the case, and who is so situated that disposing of the case may as a practical matter impair or impede the movant's ability to protect its interest—unless existing Parties adequately represent that interest.
2. On timely motion, the Court may permit anyone to intervene as amicus curiae who:
    a. is not a Party to a case and has not been solicited by any of the Parties to assist a Court; and
    b. brings to the attention of the Court matters relevant to the disposition of the case that have not already been brought to its attention by the Parties.
3. In exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original Parties' rights.

4. Consistent with Article 1.6, the Court may restrict the scope of intervention as appropriate to the Party or other Intervenor, such as limiting the Party or Intervenor to submitting written briefs without participation in any related oral arguments.
5. Consistent with the requirements of Section 3.2.3, the motion must state the interests of the Intervenor and the grounds for intervention. A motion to intervene must be served on the Parties pursuant to Section 3.2.4.
6. Upon receiving a motion pursuant to Sections 4.2.1.2.d or 5.1.6.2.b.ii, a petition pursuant to Section 5.3.2.3.a, or an appeal pursuant to Section 5.2.3, the Court shall:
    a. if the motion presents a legal issue—the raising of which is not merely frivolous or vexatious under Section 3.2.2.3.a—that involves a substantial question as to which of two or more allegedly conflicting laws applies,
    b. appoint one or more qualified subject-matter experts to provide independent, nonbinding assessments of the question before the Court.

§ 4.2.6. Case Consolidation

1. If offenses or Defendants are charged in separate Complaints, on motion of any Party or Intervenor pursuant to Section 4.2.5, the Court may order that the charges be tried together or that the Defendants be joined for purposes of trial—so long as the offenses or the Defendants, as the case may be, could have been joined in a single Complaint pursuant to Section 2.1.3.
    a. Proceedings thereafter shall be under a single superseding Complaint consistent with Section 1.4.3—including the charging requirements of Section 1.4.3.3.d through 1.4.3.3.f—brought by a single Prosecutor, selected as necessary pursuant to Section 1.4.1.7. Such proceedings shall be the same as if initially brought under a single Complaint by a single Prosecutor.
    b. The Court shall not order that the offenses or the Defendants, as appropriate, be tried together without first providing an opportunity to be heard by the Defendant or Defendants and the Prosecutor under each Complaint. Any such order shall be made sufficiently before trial.

§ 4.2.7. Severance

1. With the agreement of all Parties, the Court may order a severance of Defendants or an election of separate trials of counts or charges.
2. If it appears that a Defendant or the Prosecutor is prejudiced by a joinder of offenses or of Defendants, the Court may:
    a. order that the counts, if pursued, be tried separately;
    b. grant a severance of Defendants; or
    c. provide whatever other relief justice requires.
3. In ruling on a Defendant's motion for severance, the Court may order the Prosecutor to deliver to the Court for in camera inspection any statements or confessions made by the Defendants that the Prosecutor intends to introduce in evidence at trial.
4. No severance of offenses or Defendants may be ordered after trial has commenced, unless the Defendant consents or a mistrial has properly been declared as to such offense or Defendant.

5. Severance of offenses during trial—upon motion of the Defendant or with the Defendant's consent—shall not bar a subsequent trial of that Defendant on the severed offenses.

4.3. Discovery

§ 4.3.1. General Standards

1. All requests for disclosure required by Sections 4.3.3 and 4.3.4 shall be made to the opposing Party. Any materials furnished to an Attorney pursuant to this Article shall not be disclosed to the public, but only to others to the extent necessary for the proper conduct of the case.
2. Pursuant to Section 1.3.5, disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the Prosecutor or the Defendant.
3. The duties prescribed in this Article shall be continuing duties, and each Party shall make additional timely disclosure whenever new or different information subject to disclosure is discovered.

§ 4.3.2. Pretrial Discovery Conference

1. No later than 14 days after arraignment under Section 4.1.1, the Prosecutor and the Defendant—through Defense Counsel unless waived pursuant to Section 1.5.5.3—must confer and try to agree on a timetable and procedures for pretrial disclosure under these rules.
2. After the discovery conference, one or both Parties may ask the Court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.

§ 4.3.3. Disclosure by Prosecutor

1. The Prosecutor shall make available to the Defendant the following material and information within the Prosecutor's possession or control:
    a. the names and addresses of all persons whom the Prosecutor intends to call as witnesses in the case-in-chief, together with their written or recorded statements;
    b. all statements of the Defendant and of any person who will be tried with the Defendant;
    c. all original and supplemental reports prepared by an Enforcement Agency in connection with the particular offense with which the Defendant is charged;
    d. the names and addresses of experts who have personally examined the Defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments, or comparisons that have been completed;
    e. a list of all papers, documents, photographs, or tangible objects—including electronic, magnetic, optical, or other recording or data compilation—that the Prosecutor intends to use at trial, or that were obtained from or purportedly belong to the Defendant;
    f. a list of all prior convictions of the Defendant;
    g. a list of all prior acts of the Defendant that the Prosecutor intends to use at trial, such as to prove motive, intent, or knowledge;

h. all material or information that tends to mitigate or negate the Defendant's guilt as to the offense charged, or that would tend to reduce the Defendant's punishment therefor;
i. whether any covert enforcement activities under Section 2.2.7 have preceded or affect the case—including surveillance of any conversations to which the Defendant was a party, or of the Defendant's business or residence;
j. whether a search Warrant has been executed in connection with the case; and
k. the time and place of the alleged offense, if not alleged in the Complaint.

2. Unless otherwise ordered by the Court, or agreed to by the Parties, the Prosecutor shall make available the materials and information listed in Subsection 1 not later than 30 days after arraignment or the case being set for trial, whichever occurs first.
3. At least seven days before trial, or 30 days after a request from the Defendant—whichever occurs first—the Prosecutor shall make available to the Defendant a list of the prior felony convictions:
    a. of witnesses whom the Prosecutor intends to call at trial; or
    b. that the Prosecutor intends to use to impeach a disclosed defense witness at trial.
4. The Prosecutor shall—within 30 days of a written request, unless otherwise ordered by the Court—make available to the Defendant for examination, testing, and reproduction the following:
    a. any specified items contained in the list submitted under Subsection 1.e;
    b. any emergency calls or communications existing at the time of the request that can reasonably be ascertained by the custodian of the record to be related to the case; and
    c. any written reports, statements, and examination notes made by experts listed in Subsections 1.a and 1.d in connection with the case.
5. The Prosecutor may impose reasonable conditions—including an appropriate stipulation concerning chain of custody—to protect physical evidence produced under this Section, or to allow time to complete any examination or testing of such items.
6. The Prosecutor's obligation under this Section extends to material and information in the possession or control of any of the following:
    a. the Prosecutor himself and members of the Prosecutor's staff, and any of the Prosecutor’s agents or subcontractors involved in the case; and
    b. any Enforcement Agent who has participated in the investigation of the case—so long as the Prosecutor knew, or through reasonable diligence should have known, of the existence of the material or information.
7. Upon receipt of the notice of defenses required from the Defendant under Section 4.3.4.3, the Prosecutor shall timely disclose the names and addresses of all persons whom the Prosecutor intends to call as rebuttal witnesses, together with their written or recorded statements. If the notice of defenses includes alibi, the disclosure shall also specify the names and addresses of all persons on whom the Prosecutor intends to rely to establish the Defendant's presence at the scene of the alleged offense.
8. Upon motion of the Defendant showing a substantial need in the preparation of his defense for material or information not otherwise covered by this Section—which the Defendant is unable without undue hardship to obtain by other means, including any sufficiently equivalent material or information—the Court in its discretion may issue a Subpoena under Section 2.2.3 to make such material or information available to the

Defendant. The Court may—upon the request of any person affected by the order—vacate or modify the order if compliance would be unreasonable or oppressive.

§ 4.3.4. Disclosure by Defendant

1. At any time after the filing of a Complaint—upon written request of the Prosecutor, and not less than 72 hours notice to the Defendant and Defense Counsel—the Court may order the Defendant, in connection with the particular offense with which the Defendant is charged:
    a. to appear in a line-up;
    b. to speak for identification by witnesses;
    c. to take fingerprints, palm-prints, footprints, voiceprints, or similar means of identification;
    d. to pose for photographs not involving re-enactment of an event;
    e. to try on clothing;
    f. to permit the taking of samples of the Defendant's hair, blood, saliva, urine, or other specified biological materials that involves no unreasonable intrusions of the Defendant's body;
    g. to provide specimens of the Defendant's handwriting; and
    h. to submit to a reasonable physical or medical inspection of the Defendant's body, provided such inspection does not include psychiatric or psychological examination.
2. The Defendant shall be entitled to the presence of Defense Counsel at the taking of such evidence.
3. Within the time specified in Subsection 5, the Defendant shall provide a written notice to the Prosecutor specifying all defenses as to which the Defendant intends to introduce evidence at trial.
    a. Defenses subject to this Subsection include alibi, mistaken identity, insufficiency of a prior conviction, mens rea defenses, and affirmative defenses.
    b. The notice shall specify for each defense the persons—other than the Defendant—whom the Defendant intends to call as witnesses at trial in support thereof.
    c. If the notice of defenses includes alibi, the notice shall also specify each specific place the Defendant claims to have been at the time of the alleged offense.
    d. It may be signed by either the Defendant or Defendant's counsel, and shall be filed with the Court.
    e. For good cause, the Court may grant an exception to any of the foregoing requirements of this Subsection.
    f. Evidence of an intention to rely on a defense, later withdrawn—or of a statement made in connection with that intention—is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.
4. Simultaneously with the notice of defenses submitted under Subsection 3, the Defendant shall make available to the Prosecutor for examination and reproduction the following material and information known to the Defendant to be in his possession or control:

a. the names and addresses of all persons—other than that of the Defendant—whom the Defendant intends to call as witnesses at trial, together with their relevant written or recorded statements;
b. the names and addresses of experts whom the Defendant intends to call at trial, together with the results of the Defendant's physical examinations and of scientific tests, experiments, or comparisons that have been completed; and
c. a list of all papers, documents, photographs, and other tangible objects—including electronic, magnetic, optical, or other recording or data compilation—that the Defendant intends to use at trial.

5. Unless otherwise ordered by the Court, the Defendant shall disclose the materials and information listed in Subsections 3 and 4 not later than 20 days after the Prosecutor's disclosure pursuant to Section 4.3.3.2.
6. Unless otherwise ordered by the Court, the Defendant, within 10 days of a written request, shall make the following available to the Prosecutor for examination, testing, and reproduction:
    a. any specified items contained in the list submitted under Subsection 4.c; and
    b. any completed written reports, statements, and examination notes made by experts listed in Subsections 4.a and 4.b in connection with the particular case.
7. The Defendant may impose reasonable conditions—including an appropriate stipulation concerning chain of custody—to protect the physical evidence produced under this Section, or to allow time to complete any examination or testing of such items.
8. The Defendant's obligation under this Section extends to material and information within the possession or control of the Defendant, Defense Counsel, or any of their employees, agents, or subcontractors involved in the case.
9. Upon motion of the Prosecutor showing a substantial need in the preparation of its case for material or information not otherwise covered by Subsection 4—of which the Prosecutor is unable without undue hardship to obtain the substantial equivalent by other means, and the disclosure of which will not violate the Defendant's rights—the Court in its discretion may issue a Subpoena under Section 2.2.3 to make such material or information available to the Prosecutor. The Court may—upon request of any person affected by the order—vacate or modify the order if compliance would be unreasonable or oppressive.

§ 4.3.5. Excision and Protective Orders

1. Upon motion of any Party showing good cause, the Court may at any time order that disclosure of the identity of any witness be deferred for a reasonable period of time, not to extend beyond five days before the date set for trial—or that any other disclosures required by this Chapter be denied, deferred, or regulated—when it finds:
    a. that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any Party; and
    b. that the risk cannot be eliminated by a less substantial restriction of discovery rights.
2. Whenever the Court finds, on motion of any Party, that only a portion of a document, material, or other information is subject to disclosure under this Chapter, the Court may authorize the Party disclosing it to excise that portion of the material that is not subject to disclosure and to disclose the remainder.

3. On motion of the Party seeking a protective or excision order—or submitting to the Court for a determination as to whether any document, material, or other information is subject to disclosure—the Court may permit the Party to present the material or information for in camera inspection by the Court. Counsel for all other Parties shall be entitled to be present when such presentation is made.
4. If the Court enters an order that any material—or any portion thereof—is not subject to disclosure under this Chapter, the entire text of the material shall be sealed and preserved in the record to be made available to the Appeals Court in the event of an appeal.

§ 4.3.6. Disclosure Deadlines

1. Any Party that determines additional disclosure may be forthcoming within 30 days of trial, shall immediately notify the other Parties of the circumstances and when the disclosure will be available.
2. Unless otherwise permitted, all disclosure required by this Chapter shall be completed at least seven days before trial.
3. Absent agreement by the Parties, a Party seeking to use material or information not disclosed at least seven days before trial must obtain leave of Court by motion—supported by affidavit or testimony under oath—to extend the time for disclosure and to use the material or information.
    a. If the Court finds that the material or information could not have been discovered or disclosed earlier with due diligence—and the material or information was disclosed immediately upon its discovery—the Court shall grant a reasonable extension to complete the disclosure, and grant leave to use the material or information.
    b. Absent such a finding, the Court may either:
        i. deny leave; or
        ii. grant a reasonable extension to complete the disclosure and leave to use the material or information—and it may impose any sanction listed in Section 4.3.7 other than preclusion or dismissal.
4. Upon a motion filed before the final deadline for disclosure in Subsection 2—which is supported by affidavit from a crime laboratory representative or other scientific expert that additional time is needed to complete scientific or other testing, or reports based thereon, and specifying the additional time necessary—the Court shall grant a reasonable extension in which to complete the disclosure, unless it finds that the request for extension resulted from dilatory conduct, neglect, or other improper reason on the part of the moving Party or person listed in Sections 4.3.3.6 or 4.3.4.8. The period of time of any extension shall be excluded by the Court from all time periods prescribed in Section 4.3.3.2 through 4.3.3.4, Section 4.3.4.4 through 4.3.4.6, and Subsections 1 and 2.

§ 4.3.7. Sanctions

1. If a Party fails to make a disclosure required by Sections 4.3.1 through 4.3.6, any other Party may move to compel disclosure and for appropriate sanctions.
    a. If the motion is granted, the Court shall order disclosure and shall impose any sanction under Subsection 2—unless the Court finds that the failure to comply

was harmless or that the information could not have been disclosed earlier, even with due diligence and timely disclosure upon discovery.

b. All orders imposing sanctions shall take into account the significance of the information not timely disclosed, the impact of the sanction on the Parties, the culpability of the Party failing to make the disclosure, and the stage of the proceedings at which the disclosure is ultimately made.

2. Available sanctions include, but are not limited to:
    a. granting a continuance or declaring a mistrial when necessary in the interests of justice;
    b. holding a witness, Party, person acting under the direction or control of a Party, or counsel in contempt;
    c. in extraordinary circumstances, precluding or limiting the calling of a witness, use of evidence, or argument in support of or in opposition to a charge or defense;
    d. in extraordinary circumstances, dismissing the case with or without prejudice; or
    e. any other appropriate sanction.
3. No motion brought under Subsection 1 will be considered or scheduled unless a separate statement of moving counsel is attached certifying that—after personal consultation or good faith efforts to do so—counsel have been unable to satisfactorily resolve the matter.

4.4. Mental Condition and Competence

§ 4.4.1. Defendant's Mental Condition

1. The Court must order a Defendant to undergo a mental health examination pursuant to Section 4.4.2, if:
    a. the Defendant has timely raised a claim of mental illness pursuant to Section 4.3.4.3;
    b. the Court—on its own motion or the motion of any Party—has reasonable grounds to believe that the Defendant is incompetent;
    c. the Defendant's status is due for review under Subsection 6; or
    d. it is required for a pre-sentence report.
2. A person shall not be tried, convicted, or sentenced for a criminal offense if, in the opinion of the Court, the person is—by reason of a serious mental illness, defect, or disability—unable to:
    a. understand the proceedings; or
    b. assist in the person's defense.
3. The presence of a mental illness, defect, or disability alone is not grounds for finding a Defendant incompetent to stand trial.
4. If—after considering the evidence resulting from an examination under Subsection 1—the Court has reasonable grounds to doubt the Defendant's competency under Subsections 2 and 3, the Court shall toll the proceedings and:
    a. if the offense is any felony for which the prescribed maximum term of imprisonment is not less than 15 years, order detention for preventative and therapeutic purposes—unrelated to punishment—pursuant to the standards described in Section 6.1.15.1.a and 6.1.15.1.b; or
    b. for any lesser offense, order appropriate conditional release pursuant to Section 4.1.4; and
    c. may order appointment of a guardian as provided by law.
5. A person detained under Subsection 4 shall not be detained for longer than the maximum period of incarceration that would have applied had the person been sentenced for the alleged offense or offenses.
6. The Court shall periodically review the Defendant's competence to stand trial and conditions of detention or release under Subsection 4:
    a. on the request of a Party; and
    b. not less than annually.
7. Defense Counsel shall not waive any hearing required by this Section—but is authorized to consent, on behalf of the Defendant, to necessary medical or psychiatric treatment and procedures.
8. The Court may order that detention or release under Subsection 4 shall include—in addition to any other requirements under this Code—treatments identified by the mental health examination as likely to restore the Defendant to competence.

§ 4.4.2. Mental Health Examination

1. A mental examination pursuant to Section 4.4.1 shall be conducted by a qualified psychiatrist or psychologist selected by the Court. All available medical and criminal

history records shall be provided to the examining mental health expert as and when ordered by the Court.

2. If the Court so orders, the examining psychiatrist or psychologist shall submit a report containing an opinion as to whether the Defendant is incompetent, as defined in Section 4.4.1.2, and the basis for the opinion. The report may also include additional findings and opinions concerning whether the Defendant's mental condition creates a present danger to the Defendant or to others. If the opinion is that the Defendant is incompetent, the report shall also state the psychiatrist's or psychologist's opinion of:
    a. the condition causing the Defendant's incompetency and the nature thereof;
    b. the treatment required for the Defendant to attain competency;
    c. the most appropriate form and place of treatment—in view of the Defendant's therapeutic needs and potential danger to the Defendant or to others—and an explanation of appropriate treatment alternatives;
    d. the likelihood of the Defendant's attaining competency under treatment, and the probable duration of such treatment;
    e. the availability of the various types of acceptable treatment in the local geographic area—specifying the agencies or the settings in which the treatment might be obtained, and whether the treatment would be available on an out-patient basis; and
    f. whether the treatment identified in Subsection 2.b is in the best medical interest of the Defendant in light of his medical condition.
3. If the Court so orders, the examining psychiatrist or psychologist shall submit a report containing an opinion of the mental condition of the Defendant at the time of the alleged offense. If the opinion is that, at the time of the alleged offense, the Defendant suffered from a mental disease or defect per Section 1.5.8, the report shall also state the psychiatrist's or psychologist's opinion of the relation, if any, of such disease or defect to the alleged offense—including:
    a. whether the Defendant knew the nature and quality of the act he was doing;
    b. whether the Defendant knew that the act was wrong; and
    c. whether the Defendant lacked substantial capacity to choose whether to engage in or refrain from the act.
4. If the Court so orders, the examining psychiatrist or psychologist shall submit a report containing an opinion of the ongoing mental condition of a Defendant detained pursuant to Sections 4.1.3 through 4.1.6, or found guilty but mentally ill under Section 1.5.8—including:
    a. whether the Defendant's mental condition creates a present danger to the Defendant or to others; and
    b. recommendations for detention and conditions of confinement that meet the requirements of Section 6.1.12 and Article 6.3.
5. A report under this Section may also include additional findings and opinions on related matters as the Court may deem appropriate.

§ 4.4.3. Disclosure of Mental Health Evidence

1. The reports of experts made pursuant to Section 4.4.2 shall be submitted to the Court within 10 working days of the completion of the examination, and shall be made available to all Parties—except that any statements of the Defendant, or summaries thereof, shall be made available only to the Defendant.

   a. Upon receipt, the Court shall copy and distribute the expert's report to Defense Counsel, who is then responsible for editing a copy of the report for other Parties and returning the edited copy to the Court within 72 hours.
   b. The Court shall promptly review the edited report and make it available to the Prosecutor. All original reports shall be filed under seal with the Authoritative Registry.
2. At least 15 working days before any hearing, any Party shall make available to any other Party for examination and reproduction:
   a. the names and addresses of mental health experts who have personally examined the Defendant in connection with the case, or who examined any evidence in the case;
   b. the data resulting from mental examinations, scientific tests, experiments, or comparisons in connection with the case; and
   c. all written reports or statements made by mental health experts in connection with the case.
3. This provision does not limit the Prosecutor's duty to disclose such information under other rules, or the duty to produce exculpatory evidence.

§ 4.4.4. Privilege

1. No evidence of any kind obtained under this Article shall be admissible at any proceeding to determine guilt or innocence unless the Defendant presents evidence intended to rebut the presumption of sanity.
2. No statement of the Defendant obtained under this Article, or evidence resulting therefrom—which concerns the events which form the basis of the charges against the Defendant—shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without the Defendant's consent.
3. No statement of the Defendant, or evidence resulting therefrom, obtained under this Article concerning any other events or transactions, shall be admissible at any proceeding to determine the Defendant's guilt or innocence of criminal charges based on such events or transactions.

5. Trial and Review

5.1. Trial

§ 5.1.1. Proceedings at Trial

1. The trial shall proceed in the following order unless otherwise directed by the Court:
    a. The Complaint shall be read or summarized, and the plea of the Defendant stated.
    b. Each Party should be afforded the opportunity to make an opening statement for the purpose of explaining the issues and the evidence to be adduced at trial.
        i. The Prosecutor may make an opening statement.
        ii. The Defendant should then have the option to present an opening statement, either at the outset of the trial or at the beginning of the defense case-in-chief. If there are two or more Defendants, they shall:
            1. proceed in the order of the filing of their respective charges; or
            2. if charged in the same instrument, proceed in the order they appear therein, unless they have agreed to a different order.
        iii. In the opening statement, counsel should not allude to evidence to be presented unless, in good faith, there is a reasonable basis for believing that such evidence will be tendered and admitted in evidence.
    c. The Prosecutor shall offer the evidence in support of the charge.
    d. The Defendant may then make an opening statement if it was deferred, and offer evidence in defense.
    e. The Prosecutor shall then be allowed to offer evidence in rebuttal.
    f. If the Court allows a case-in-chief to be reopened on a showing of good cause—and if either Party is allowed to present further evidence—the other Party may present evidence in response thereto.
    g. The Prosecutor may make a closing argument, and then the Defendant may make a closing argument.
        i. Failure of the Prosecutor to make a closing argument shall not deprive the Defendant of the right to argue.
        ii. The Prosecutor may make a rebuttal argument to a Defendant’s closing argument.
            1. Any rebuttal argument shall not exceed one half of the Prosecutor's total allotted time.
            2. If the Defendant declines to make a closing argument, the Prosecutor shall not make a rebuttal argument.
2. With the permission of the Court, the Parties may agree to a method of proceeding other than provided in Subsection 1 so long as it is consistent with this Code and the Code of Destiny.
3. A Defendant under this Code is presumed innocent until proven guilty.
4. Unless this Code provides otherwise, the burden is on the Prosecutor to:
    a. prove all elements of an offense and grade provision, and disprove all exceptions to liability, as applicable, beyond a reasonable doubt;
    b. disprove all justification defenses by a preponderance of the evidence, unless the penal provision expressly provides otherwise; and

c. prove by a preponderance of the evidence all other facts required for liability, unless this Code expressly provides otherwise.

5. Unless this Code expressly provides otherwise, the burden is on the Defendant to prove all elements of a defense or mitigation by a preponderance of the evidence, including excuse defenses and non-exculpatory defenses (e.g. double jeopardy).
6. Consistent with the requirements in Article 4.4, if the Prosecutor proves the actus reus and mens rea of an offense beyond a reasonable doubt, the burden is on the Defendant to prove a claim of mental illness under Sections 1.5.8 and 4.3.4.3 by a preponderance of the evidence, in which case:
    a. in order to convict and sentence the Defendant for the charged offense, the Prosecutor must prove beyond a reasonable doubt that the Defendant does not suffer from a mental illness under Section 1.5.8; or
    b. the Defendant shall be adjudicated to be guilty but mentally ill under Section 1.5.8 and subject to sentencing pursuant to Section 6.1.15.
7. Except as provided elsewhere in this Code, all actions and proceedings in the Courts shall abide by CoD 6.2.4 in general, and shall specifically adopt the rules from the Uniform Rules of Evidence pursuant to Section 3.1.4, and the general principles of liability under the Common Law of England and, as necessary, the general provisions of the Model Penal Code (Am. Law Inst. 1985).

§ 5.1.2. Control of Proceedings

1. The Court should permit:
    a. full and proper examination and cross-examination of witnesses—but should require the interrogation to be conducted fairly and objectively, and with due regard for the dignity and legitimate privacy of the witnesses; and
    b. reasonable latitude to counsel in the examination and cross-examination of witnesses—but should not permit unreasonable repetition or the pursuit of clearly irrelevant or improper lines of inquiry.
2. The Court should control the length, manner, and timing of argument—with due respect for the obligation of counsel to present objections to procedures and the admissibility of evidence, to request rulings on motions, to make offers of proof, and to have the record show adverse rulings and reflect conduct of the Judge that counsel considers prejudicial.
    a. During trial, counsel should raise any motion—or any objection to the introduction of evidence, testimony of witnesses, or orders of the Court—by stating only that counsel has a "motion" or an "objection," and by then stating succinctly the legal grounds for the motion or the objection.
    b. If a brief conference between counsel might expedite matters, the Court may grant them leave to confer.
    c. Rulings on motions and objections should be made by the Court, providing reasons for its rulings.
    d. Objections, motions, statements of grounds, argument and discussion, the ruling of the Court, and the reasons given by the Court for its ruling—should be made part of the record, consistent with the relevant level of confidentiality under Section 3.1.3.

3. The Court should respect the obligation of counsel to refrain from speaking on privileged matters; and it should avoid putting counsel in a position where their adherence to the obligation, such as by a refusal to answer, may tend to prejudice the client. Unless the privilege is waived or is otherwise inapplicable, the Court should not request counsel to comment on evidence or other matters where counsel's knowledge is likely to be gained from privileged communications.

§ 5.1.3. Motion for a Judgment of Acquittal

1. After the Prosecutor closes his evidence, the Court, on the Defendant's motion, must enter a judgment of acquittal of any offense for which the evidence is insufficient for any rational trier of fact to find guilt beyond a reasonable doubt.
    a. On its own motion, the Court may consider whether the evidence is insufficient to sustain a conviction.
    b. If the Court denies a motion for a judgment of acquittal at the close of the Prosecutor's evidence, the Defendant may offer evidence without waiving opposition thereto.
2. The Prosecutor may appeal when the Court enters a judgment of acquittal.

§ 5.1.4. Judgment

1. The Court shall render a judgment—in all cases and on any charge—finding the Defendant not guilty, guilty, or guilty but mentally ill.
    a. If the Court considers different counts, offenses, or degrees of offenses, the judgment shall specify each count, offense, or degree of which the Defendant has been found not guilty, guilty, or guilty but mentally ill.
    b. If the Court cannot reach a judgment on one or more Defendants or counts, the Court may declare a mistrial as to those Defendants or counts.
2. When a Defendant is acquitted of any charge—or of any count of any charge—judgment pertaining to that count or to that charge shall be pronounced and entered immediately.
3. When a Defendant is charged for an offense or offenses, and acquitted on all charges, the judgment shall be pronounced and entered immediately.
    a. If in custody solely for the offense or offenses for which he was acquitted, the Defendant must be released forthwith.
    b. The Prosecutor must pay the reasonable legal costs of that person pursuant to Section 6.1.10.
4. On a determination of guilt on any charge, or on any count of any charge:
    a. judgment pertaining to that count, or to that charge, shall be pronounced and entered together with the sentence;
    b. the person shall be remanded in custody, if a term of incarceration is required or likely to be imposed at sentencing; and
    c. the Court shall proceed to sentencing pursuant to Section 5.1.5.

§ 5.1.5. Sentencing

1. Upon a determination of guilt, the Court shall:
    a. request Party submissions pursuant to Section 6.2.1;

b. unless waived by consent of the Parties, order a pre-sentence report pursuant to Section 6.2.2;
c. if required, order a mental health examination pursuant to Section 4.4.2; and
d. schedule a sentencing hearing pursuant to Section 6.2.3.

2. Where a judgment or sentence, or both, have been set aside by a post-trial motion, on appeal, or by collateral attack, the Court may not impose a sentence for the same offense, or for a different offense based on the same conduct, that is more severe than the prior sentence—unless:
   a. it concludes, on the basis of evidence concerning conduct by the Defendant occurring after the original sentencing proceeding, that the prior sentence is inappropriate; or
   b. the original sentence was unlawful—and on remand, it is corrected and a lawful sentence imposed.

§ 5.1.6. Post-Trial Motions

1. A Party may submit a post-trial motion—within 10 days of the judgment and sentence—for the Court to consider granting a new trial or other appropriate remedies.
2. The Court may in response to a post-trial motion:
   a. decline the motion; or
   b. take additional testimony, vacate any judgment, revise the sentence, or grant a new trial or other relief under Subsection 1, if:
      i. new and material evidence is recently discovered that would probably produce a different result at a new trial, and such evidence could not have been discovered sooner by reasonable diligence; or
      ii. for any other reason the Defendant has not received a fair and impartial trial, or a manifest injustice will otherwise occur.
3. The Court—on its own motion or the written motion of a Party—after giving prior notice:
   a. may correct:
      i. a clerical error in a judgment, order, or other part of the record;
      ii. an error in the record arising from oversight or omission; or
      iii. a sentence that resulted from arithmetical, technical, or other clear error; or
   b. may reduce a sentence after conviction pursuant to Section 6.1.14.

§ 5.1.7. Court Dissolution and Appointment of Successor

1. A Court established pursuant to Sections 2.1.1.3.b and 3.1.1.1, shall dissolve by final order of the Court after:
   a. the determination and administration of costs;
   b. judgment and issuance of the sentence and exhaustion of any direct appeal;
   c. adjudication of any related civil claims pursuant to Section 2.2.8.3; and
   d. the conclusion of any ongoing or scheduled collateral proceedings pursuant to Section 5.3.1.5.
2. The final order shall contain a plan for succession of judicial duties arising under the case or related to it.

5.2. Appeals

§ 5.2.1. Notice of Appeal

1. Appeal may be sought by filing a written notice with the Trial Court or Collateral Court within 30 days from the entry of the judgment or order appealed from. The notice shall specify:
    a. the Party or Parties taking the appeal (Appellant);
    b. the current residence address—and if different, the current mailing address—of each Party taking the appeal; and
    c. the judgment or order from which the appeal is taken.
2. Upon receipt of a notice of appeal, the Court shall:
    a. immediately send notice to all other Parties;
    b. review the appeal's merits pursuant to Section 5.2.3; and
    c. without undue delay:
        i. request amendment by the Appellant for reconsideration;
        ii. certify the appeal; or
        iii. refuse to certify the appeal.
3. After receipt of a decision under Subsection 2.c:
    a. the Appellant may seek the formation of an Appeals Court pursuant to Section 5.2.2; and
    b. the Prosecutor or the Defendant, as appropriate, may pursue a cross-appeal.

§ 5.2.2. Court Formation

1. Before exercising his right to seek the formation of an Appeals Court pursuant to Section 5.2.1.3, an Appellant shall post a cash deposit or bond approved by the Court for all estimated court costs incurred—including unpaid fees, court costs, and amounts imposed pursuant to this Code:
    a. if the Appeal was certified by the Court, for that Court only; or
    b. if the Appeal was not certified by the Court, for that Court and also for the estimated costs of the Appeals Court.
2. The ultimate amount of a cash deposit or bond shall be determined by—and, as necessary, (re)deposited or transferred pursuant to—an order of the Appeals Court after its formation.
3. The Appeals Court shall consist of three Judges appointed by the Chief Justice of the Eastern Caribbean Supreme Court pursuant to Article 1.2.
    a. One of the appointed Judges shall be designated the Presiding Judge of the Appeals Court.
    b. No member of the Appeals Court shall have been involved in any earlier stage in case proceedings.
4. Unless otherwise specified, where this Code leaves power to the Court or Judge, this shall refer to the Presiding Judge in relation to the Appeals Court—except on dispositive rulings of the Appeals Court, which are subject to majority rule of the panel of Appeals Court Judges.

5. Nothing in this Section shall affect the right of any Party to appeal to the Eastern Caribbean Court of Appeal, and thereafter to the Privy Council, in accordance with the Supreme Court Order and applicable law.

§ 5.2.3. Right to Appeal

1. A Defendant has the right to appeal any judgment of the Trial Court adverse to him. A Defendant may also seek appellate review of orders:
    a. granting a new trial, where the Defendant claims that the proper disposition should have been a judgment in favor of the Defendant; or
    b. finding the Defendant incompetent to stand trial, but not on his own motion.
2. A Prosecutor has the right to appeal in the following situations—provided that the relevant decision or order is not made after the Defendant has been put in jeopardy and before the judgment or finding on the Complaint:
    a. an order dismissing a Complaint on substantive grounds, such as the failure to state an offense under law;
    b. an order that terminates the prosecution on other grounds, such as an order finding a denial of speedy trial;
    c. pretrial orders granting motions to declare evidence inadmissible—including confessions—where such evidence is indispensable to prosecuting the case; and
    d. any other ruling where the effect is to debilitate—although not necessarily to foreclose completely—prosecuting the case.
3. Any other Party, Petitioner, or affected participant in a criminal case or proceeding has the right to appeal in the following situations:
    a. a Party seeking review of case consolidation under Section 2.1.5;
    b. a Court or Party challenging the transfer of case records—or an order restricting such transfer—under Section 3.1.2.2.b;
    c. a Contemnor seeking review pursuant to Section 3.3.9.7;
    d. a Petitioner appealing pursuant to Sections 5.3.2.4 and 5.3.4.1.c; or
    e. any other Party or affected participant whose substantial rights—as defined in Section 3.1.4.6.a—have been denied and will thereby be foreclosed unless subject to appeal.

§ 5.2.4. Stay of Execution and Release Pending Appeal

1. When an appeal has been instituted by a convicted Defendant after a sentence of incarceration has been imposed, the Court may review the Appellant's custody pending final decision on appeal.
    a. The Appellant bears the burden of seeking and justifying a stay of execution and release—which shall be subject to a fresh determination by the Court:
        i. pursuant to the factors listed in Section 4.1.4; and
        ii. taking into due consideration the change in the Appellant’s legal status, to a convicted and sentenced Offender.
    b. The decision of the Court is subject to redetermination by the Appeals Court on motion of either the Prosecutor or the Defendant.

c. Dilatory pursuit of an appeal—through acts or omissions of Appellant or his counsel—shall be grounds for termination of the Appellant's release pending appeal.

2. When review is sought by the Prosecutor, the following standards apply to the custody of Defendants pending prosecution appeal from a Trial Court's decisions:
    a. Where the Trial Court has dismissed the Complaint on substantive grounds—or the Court has otherwise upheld a motion that terminates the prosecution—the Defendant shall be released on nominal bail or on his own recognizance until final decision on the appeal.
    b. In other cases, the Defendant should not be denied liberty pending determination of a prosecution appeal unless there is cogent evidence that the Defendant:
        i. will not abide by the judgment of the Appeals Court; or
        ii. is likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

§ 5.2.5. Record on Appeal

1. Upon formation of an Appeals Court, the Court shall deliver to the Appeals Court within 10 days the case record compiled under Sections 1.8.2.1 and 3.1.2.
2. Counsel for the Parties shall specify those portions of the court proceedings to be included in the record for purposes of appeal.
3. If the Court fails to transmit the records to the Appeals Court within the time prescribed, the Appellant shall suffer no procedural disadvantage from the delay and may have damages against those responsible for it.
4. A Party's failure to comply with this Section shall be grounds for the Court—on its own motion or on motion of a Party—to dismiss the appeal with prejudice and with costs.

§ 5.2.6. Processing Appeals

1. An Appeals Court shall exercise its power of review consistent with Section 5.2.7—so that all pertinent legal issues are considered on their merits insofar as possible—giving a final determination of the entire case concerning the Appellant. The Appeals Court must adjudicate any claims made by the Appellant, or by any Party in response or on cross-appeal.
2. For uncertified appeals only, an Appeals Court may at its own discretion employ simplified or abbreviated procedures—so long as it still ensures:
    a. the Judges are adequately informed as to the facts and the proceedings under review;
    b. the Judges understand the contentions of the Parties;
    c. each Judge considers to a reasoned conclusion the facts and law in every case; and
    d. decisions of the Appeals Court are reached collegially, by majority rule of the panel of Judges.
3. After its review under Section 5.2.7, the Appeals Court shall:
    a. affirm, reverse, or modify—in whole or in part—the decision of the Court under review;

b. make a public record of the reasons for its decision, which must be written in the case of certified appeals;
c. remand the case to that Court for further proceedings not inconsistent with the decision of the Appeals Court; and
d. after distribution of costs pursuant to Sections 5.2.2.1 and 5.2.2.2, dissolve.

§ 5.2.7. Standards of Review

1. If an alleged error has been properly preserved pursuant to Section 3.3.2, an Appeals Court shall review:
    a. findings of fact for clear error—giving due regard to the opportunity of the Trial Court to evaluate such things as witness credibility—and shall accept the findings of fact of the Trial Court unless they are clearly erroneous;
    b. conclusions of law de novo, applying independent scrutiny without deference to the Trial Court's decision;
    c. mixed questions of law and fact based on functional considerations as to which Court is better positioned to decide the issue:
        i. by reviewing the decision for clear error when, among other things, probing appellate scrutiny will not contribute to the clarity of legal doctrine—such as when the issue involves varied, fleeting, narrow, or otherwise special facts that resist generalization; and
        ii. by reviewing the issue de novo when, among other things, there is a need for the Appeals Court to clarify legal principles—such as when the interests at stake are deemed too important to entrust to the judgment of a single Judge constrained by the trial process; and
    d. discretionary decisions of the Trial Court for abuse of discretion—including the Trial Court's supervision of litigation through procedural and evidentiary decisions—which are made within a wide range of choices, and which must be resolved to move trials forward in a fair and efficient manner to achieve the orderly and expeditious disposition of cases.
2. For properly preserved claims under Subsection 1:
    a. If the Appeals Court concludes that an error has occurred, the judgment below must still be affirmed unless the Appeals Court finds that the error affected the objecting Party's substantial rights, as defined in Section 3.1.4.6.a.
        i. The Party that benefited from the error in the proceedings under review bears the burden of showing that the error was harmless and, if the error involves a right under CoD Chapter 1, that it was harmless beyond a reasonable doubt.
        ii. The Appeals Court must examine the proceedings in their entirety when assessing potential prejudice—taking into consideration, among other things, the character and stakes of the proceedings, and the effect of the error on the decision-making process.
    b. Notwithstanding Subsection 2.a, a remedy is required when, among other things:
        i. the error is a structural defect—rather than a mistake within the trial process itself—affecting the framework within which a criminal trial proceeds, such that the error defies analysis because it is intrinsically

prejudicial, or because its harmful consequences are necessarily unquantifiable and indeterminate;

ii. the error necessarily renders a trial fundamentally unfair—such as by depriving a Defendant of basic protections without which a criminal trial cannot reliably serve its function in determining guilt or innocence, and, as a result, no criminal punishment may be regarded as fundamentally fair; or

iii. the error involved a right where either proof of its violation necessarily includes a showing of prejudice—or, conversely, harmlessness is irrelevant because the right at issue is designed to protect an interest other than preventing erroneous judgments, such as a Defendant's right of self-representation under Section 1.5.5.3.

3. If an alleged error was not brought to the Trial Court's attention or otherwise properly preserved:
    a. the Appeals Court may nonetheless consider the claim if:
        i. the alleged error has not been affirmatively waived through the intentional relinquishment or abandonment of a known right;
        ii. the error is plain, such that it was clearly contrary to the law;
        iii. the error affected the claimant's substantial rights such that, informed by the entire record, the probability of a different result is sufficient to undermine confidence in the outcome of the proceeding; or
        iv. the error seriously affected the fairness, integrity, or public reputation of the judicial process; and
    b. the Party claiming the error bears the burden of proof to show a miscarriage of justice has occurred.
4. Matters are not reviewable by an Appeals Court if no Party contests that such claims were waived before the Trial Court—with the exception of questions as to whether the Trial Court has jurisdiction over the case, which are subject to de novo review by the Appeals Court.

5.3. Collateral Proceedings

§ 5.3.1. Collateral Courts

1. A Collateral Court may be summoned by:
    a. a Warrant Agent or Agency seeking to conduct covert enforcement activities pursuant to Section 2.2.7;
    b. a Court seeking the appointment of counsel pursuant to Section 3.3.6.6.c;
    c. a person seeking the appointment of a single Prosecutor under Section 1.4.1.7, or of a guardian ad litem under Sections 1.5.4.4, 1.6.2.3, and 4.4.1.4.c;
    d. a person subject to periodic review pursuant to Section 4.4.1.6;
    e. a person convicted or subject to court-ordered detention that meets the standards for collateral relief pursuant to Section 5.3.2;
    f. a person challenging the enforcement of, and compliance with, any sentence under Sections 6.3.2, 6.3.3, or 6.3.7;
    g. a Party seeking extradition pursuant to Article 5.4; and
    h. pursuant to Section 1.1.5.2.b, a person seeking disqualification of an Officer of the Court who is not under the jurisdiction of a Court currently in session.
2. A person or Party under Subsection 1 may summon a Collateral Court by:
    a. registering the case with an Authoritative Criminal Registry under Section 1.8.1;
    b. requesting that the Chief Justice of the Eastern Caribbean Supreme Court appoint a Judge pursuant to Article 1.2 to serve as the Collateral Court for purposes of proceedings pursuant to this Article;
    c. if applicable, providing notice—including of any right to be heard, accompanied by copies of the petition and any supporting materials—to any Party and any Court (or successor) in the case or cases from which relief is sought in the collateral proceeding; and
    d. posting a cash deposit—or bond approved by the Court—for all estimated court costs.
3. As appropriate or necessary, a Collateral Court shall:
    a. establish an effective procedure for the production of documents and other materials, for which the Court may order discovery to assist in advancing a case toward disposition; and
    b. conduct a hearing to determine the proper disposition of the petition for relief or application for court order:
        i. by receiving evidence, testimonial or otherwise, as required to resolve material questions of fact pursuant to Section 3.1.4; or
        ii. through oral argument by the Parties concerning the proper resolution of material questions of fact or law.
4. Subject to more specific provisions of this Code, the proponent of factual contentions shall have the burden of establishing those facts by a preponderance of evidence. Any allocation of the burden of proof on issues of fact—between the Petitioner or Applicant, and any respondent—shall be correlated to the underlying substantive law governing the claims advanced.
5. At the conclusion of the collateral proceedings, including any plenary hearing, the Court shall issue an appropriate dispositive order pursuant to Section 5.3.4, and dissolve.

§ 5.3.2. Collateral Relief

1. Relief under this Article is unavailable for cases and claims that are pending in another Court or proceeding, or that have been fully and finally litigated under Section 5.3.3.
2. After conviction and sentence, or other court order of detention, the Defendant or Detainee under Section 6.3.1 may petition for review of the validity of judgments of conviction—or of the legality of custody or supervision—alleging grounds for relief under Subsection 3.
    a. Although a collateral proceeding is separate from the original criminal prosecution, any collateral review is an extension of the original proceeding and should be related to it insofar as feasible.
    b. Any remedy should encompass all claims—whether factual or legal in nature—and the procedural characteristics of any collateral remedy should be appropriate to the purposes of the remedy.
3. The grounds for relief under this Section are meritorious claims challenging judgments of conviction and sentence, and meritorious claims challenging the legality of custody or restraint based upon a court order authorizing a person's detention—including cognizable claims that:
    a. the conviction or court order was obtained, or the sentence or detention was imposed, in violation of the law;
    b. the conduct for which the Petitioner was prosecuted—or for which the Petitioner was otherwise detained as part of a prosecution—is legally protected;
    c. the Court rendering judgment, or an order of detention, was without personal or subject matter jurisdiction as required under CoD 7.1.3 and this Code;
    d. the sentence imposed exceeded the maximum authorized by law, or the sentence or detention order is otherwise not in accordance with the law;
    e. there exists evidence of material facts which were not—and in the exercise of due diligence, could not have been—presented and heard in the proceedings leading to conviction and sentence, or court order of detention, and that now require vacation of the conviction, sentence, or detention order;
    f. there has been a significant change in law, whether substantive or procedural, applied in the process leading to Applicant's conviction, sentence, or detention order where sufficient reason exists to allow retroactive application of the changed legal standard; and
    g. a sentence has been fully served or that there has been unlawful revocation of release.
4. A Collateral Court may stay the execution of any judgment, sentence, or other court order—and it may order the release of detained Applicants on their own recognizance or with sufficient sureties in appropriate cases—pending final disposition of petitions for collateral relief or appellate review of the same.

§ 5.3.3. Finality

1. Any issue that has been fully and finally litigated in the proceedings leading to a judgment of conviction, court order of detention, or other court order under Section 5.3.2, shall not be relitigated in collateral proceedings.

   a. An issue is deemed fully and finally litigated when an Appeals Court to which the Petitioner or Applicant could appeal as of right has ruled on the merits of the question, or the time for an appeal has passed under Section 5.2.1.
   b. Finality is an affirmative defense to be pleaded and proved by a respondent.
2. Unless barred because of abuse of process, claims advanced in collateral petitions or applications shall be decided on their merits, even if they were not fully and finally litigated in the proceedings leading to judgments of conviction or court orders of detention.
3. Abuse of process is an affirmative defense for the respondent to plead and prove.
   a. A Court may deny relief on the ground of an abuse of process where a Petitioner raises in a collateral proceeding a factual or legal contention that the Petitioner deliberately or inexcusably:
      i. failed to raise in the proceeding leading to judgment of conviction, or to the court order of detention; or
      ii. failed to pursue the matter on appeal, having raised the contention in the Trial Court.
   b. A Petitioner is required to show cause for the failure to comply with a rule or procedure governing conduct of criminal prosecutions where:
      i. the rule or procedure requires that specified defenses or objections be presented at a certain time; and
      ii. the Petitioner raises in a collateral proceeding an issue that might have been presented in a timely manner, but was not so presented in the proceeding leading to judgment of conviction or court order of detention.
   c. A Court may deny relief on the ground of an abuse of process where a Petitioner raises in a subsequent application a factual or legal contention which the Petitioner did not use due diligence in:
      i. raising in an earlier petition; or
      ii. pursuing the matter on appeal, having raised the contention in the Trial Court.

§ 5.3.4. Dispositive Orders

1. At the conclusion of a collateral proceeding, the Court shall enter an appropriate order of disposition.
   a. If the Court finds in favor of the Prosecutor (or successor), or any other Party supporting continued detention, it shall enter an order denying the petition for relief. The order must indicate whether the denial is after plenary evidentiary hearing, on summary disposition, or on the pleadings.
   b. If the Court finds in favor of the Petitioner or Applicant, the order shall identify clearly the claim or claims found meritorious. The kind of affirmative relief ordered may vary with the nature of the meritorious contention.
   c. Upon proper motion, the Court shall have authority to stay its final order or to issue supplementary orders regarding custody, bail, and the like, pending review of its judgment by an Appeals Court.
2. The Court shall prepare a memorandum opinion making any necessary findings of fact and stating the relevant conclusions of law, along with the legal standard and arguments relied upon in making findings and reaching conclusions.

3. Notice of the dispositive order, related opinion, and any supplementary orders shall be provided without delay to the Parties to the collateral proceeding and the related criminal case, if different.
4. A judgment granting relief in a collateral proceeding shall foreclose renewal of prosecution of an Applicant only if required by the substantive ground on which relief was granted.
5. Criminal proceedings shall be permitted to resume at the stage at which the vitiating error occurred, without necessity to repeat valid portions of the original prosecution.
6. As required, resentencing of a Defendant shall be pursuant to Section 5.1.5.2. Credit shall be given—applied toward service of the minimum and maximum terms of incarceration of any new sentence—for time served under a sentence successfully challenged in a collateral proceeding.

5.4. Extradition

§ 5.4.1. Application of Code to Extradition

1. Notwithstanding any other provisions in this Code, this Article applies when:
    a. another criminal jurisdiction seeks the extradition of a person from the jurisdiction of Destiny; or
    b. a Prosecutor under Article 1.4 seeks the extradition of a person from another criminal jurisdiction.
2. The requesting jurisdiction must bear the costs:
    a. of any proceedings arising out of a request for extradition;
    b. incurred in the arrest and detention of the person to be surrendered; and
    c. incurred in conveying the person from Destiny to the requesting jurisdiction, including all transit costs.
3. Except as explicitly provided for in this Article, all normal criminal rights and procedures shall apply to proceedings under this Article, with the person to be extradited accorded the protections of a criminal Defendant.

§ 5.4.2. Request for Extradition

1. To initiate an extradition, a requesting jurisdiction must:
    a. file with an Authoritative Criminal Registry under Section 1.8.1:
        i. a request for extradition made by that jurisdiction's competent body for making such requests, and signed under oath or affirmation by the designated authorities of the requesting jurisdiction, such as the attorney general or the minister of justice; and
        ii. a signed statement from a Judge, appointed as a Collateral Court under Section 5.3.1, that he or she has validated the accuracy, completeness, and reasonable sufficiency of the details in Subsection 2; and
    b. seek the appointment of a different Collateral Court under Section 5.3.1, which shall serve as the Court for purposes of extradition proceedings pursuant to Sections 5.4.3 through 5.4.9.
2. The request for extradition must include, or be accompanied by, the following:
    a. as accurate a description as possible of the person sought, together with any other information to establish his or her identity;
    b. proof of nationality of the person whose extradition is sought;
    c. a description of the location of the person being sought;
    d. the text of the relevant provision of the requesting jurisdiction's domestic law containing the criminal offense, and a statement of the relevant penalties that can be imposed for the offense;
    e. where an arrest warrant exists or criminal charges have been instituted against the person:
        i. an original or certified copy of the arrest warrant, or the indictment or other charging document;
        ii. a statement of the criminal offense for which extradition is requested;
        iii. a description of the acts or omissions constituting the alleged offense, including an indication of the time and place of its commission; and

iv. a statement of the evidence—and, where possible, the evidence itself or copies thereof—that tends to prove the person committed the alleged offense;

f. where the person has been convicted of an offense:
   i. a statement of the criminal offense for which extradition is requested, and a description of the acts or omissions constituting the criminal offense; and
   ii. an original or certified copy of the judgment—or any other document setting out the conviction—and, if applicable:
      1. the penalty or order imposed; and
      2. a statement:
         a. regarding the enforceability of the penalty or order, and the extent to which the penalty or order remains to be served; or
         b. affirming that there is an intention to impose the penalty or order; and

g. a statement that the requesting jurisdiction consents to the application of the rule of speciality under Section 5.4.7.

3. Requests for extradition and any documents supporting them must be in English.

§ 5.4.3. Pre-Extradition Arrest

1. The Court may issue an arrest Warrant for the person whose extradition is sought where it is satisfied that:
   a. the person sought:
      i. is ordinarily resident in Destiny;
      ii. is currently in or on his way to Destiny; or
      iii. routinely travels to Destiny;
   b. a valid Warrant for the person's arrest, or an order of a similar nature, has been issued—or the person has been convicted—in another criminal jurisdiction;
   c. the request for extradition and any supporting evidence under Section 5.4.2 establish probable cause to believe the requirements of Section 5.4.4 have been met; and
   d. it is necessary in the public interest to arrest the person, including to prevent him or her from escaping or committing a criminal offense.
2. In addition to meeting the requirement of Section 2.2.2, a Warrant issued in an extradition case must include the name of the requesting jurisdiction.

§ 5.4.4. Extradition Hearing

1. The following requirements must be met for extradition to be granted:
   a. the identity and nationality of the person have been established;
   b. the offense for which extradition is sought is punishable under the criminal laws of the requesting jurisdiction by a term of incarceration exceeding one year—of which at least six months remains to be served, or a more severe penalty remains to be carried out;
   c. the conduct that constitutes the offense would, if committed in Destiny, constitute a felony;

d. the prosecution or execution of punishment is not barred by a statute of limitations—or by any other similarly determinable, readily applicable legal bar to prosecution or punishment—in the requesting jurisdiction;
e. the person whose extradition is sought has not previously been finally convicted or acquitted in Destiny of the offense per Section 5.3.3.1.a, such that further prosecution would be barred by Section 1.5.3;
f. the Court reasonably believes the requesting jurisdiction has established:
    i. in the case of a Warrant or prosecution, probable cause; or
    ii. in the case of a conviction, proof beyond a reasonable doubt; and
g. there are no substantial grounds for believing that the person's criminal rights, as understood under the Code of Destiny, will be violated by the requesting jurisdiction.

2. Extradition may be refused where:
    a. the criminal offense for which the extradition is sought was committed, in whole or in part, in Destiny; or
    b. a criminal case against the person for the offense for which his extradition is sought is pending in the Criminal Courts of Destiny.
3. Prior to refusal of a request for extradition, the requesting jurisdiction must be given ample opportunity to provide information relevant to the jurisdiction's allegation.

§ 5.4.5. Court Orders

1. After holding an extradition hearing, the Court must:
    a. render a timely ruling on a request for extradition pursuant to Section 5.4.2; and
    b. order the extradition of the person concerned if the conditions are met under Section 5.4.4.
2. An order of extradition must be in writing and contain:
    a. the name of the Court and the identity of the authority that made the request;
    b. the identity, location, and nationality of the person whose extradition is sought;
    c. the location of the person to be extradited;
    d. the date on which the extradition order may be executed;
    e. the Enforcement Agent authorized to execute the extradition order;
    f. the reasons for extradition—whether it is to prosecute the person in the requesting jurisdiction, or to serve a penalty already imposed on the person;
    g. the date of the order; and
    h. the signature of the Judge on behalf of the Court.
3. The Court may, after ordering extradition, postpone the execution of the order where:
    a. the person sought is being tried or is serving a sentence in Destiny for a criminal offense other than that for which the extradition is requested—in which case, the order may be postponed until the person is entitled to be set free by virtue of acquittal, completed sentence, or commutation of sentence; or
    b. the surrender of the person sought would, for reasons of health, endanger his life—in which case, the surrender may be deferred until it would no longer pose such a danger.
4. Where the Court refuses to grant a request for extradition, or postpones the execution of the extradition order, it must publish a written decision giving reasons for its decision.

5. Where a request for extradition is refused under Section 5.4.4.2, or because capital punishment is prescribed for the criminal offense that is the subject of the extradition request:
    a. the requesting jurisdiction or its representatives shall have standing to prosecute the offense under the Code of Destiny pursuant to Section 1.4.1.1.f; and
    b. notwithstanding the provisions of CoD 7.1.3, a person so prosecuted may be convicted and punished under the Code of Destiny for conduct committed within the other criminal jurisdiction.
6. The Prosecutor or the person whose extradition was sought may appeal the decision of the Court pursuant to Article 5.2.

§ 5.4.6. Surrender to Requesting Jurisdiction

1. Where extradition has been approved, and upon the expiration of the period for filing an appeal under Article 5.2 and Section 5.4.5.6, the Court shall, in consultation with the Parties, arrange for the surrender of the person sought without undue delay.
2. The Court may order the detention of the person sought pending surrender. In such a case, the Court must inform the requesting jurisdiction of the length of time the person sought shall be detained with a view toward surrender.
3. The person being extradited must be removed from Destiny within such reasonable period as the Court specifies—and if the person is not removed within that period, the Court may order the person's release or refuse to extradite that person.
    a. In exigent circumstances—where the delay in removing the person to be extradited is due to circumstances beyond the control of the requesting jurisdiction—the Court may extend the period of detention.
    b. The surrender of a person sought to the agents of the requesting jurisdiction must be carried out at a place determined by the Court. If possible, this place must be at the perimeter of Destiny or, alternatively, at an airport from which direct flights depart for the requesting jurisdiction.

§ 5.4.7. Rule of Speciality

1. A person extradited to a requesting jurisdiction must not be tried—or otherwise proceeded against, sentenced, detained, re-extradited to a third jurisdiction, or subjected to any other restrictions of personal liberty—in the territory of the requesting jurisdiction for any criminal offense committed before the extradition, other than a criminal offense for which extradition is granted.
2. This Section does not apply where:
    a. the extradited person has had the opportunity to leave the requesting jurisdiction, and has not done so within 45 days of final discharge in respect of the criminal offense for which he or she was extradited; or
    b. the person has voluntarily returned to the territory of the requesting jurisdiction after leaving it.

§ 5.4.8. Concurrent Requests

1. Where several jurisdictions request the extradition of the same person for the same criminal offense, priority must be given to the state of which the person is a national.
2. Where the person's state of nationality does not request extradition, priority must be given to the jurisdiction in whose territory the criminal offense was committed.
3. Where the person's state of nationality does not request extradition and the criminal offense has been committed in the territory of several jurisdictions or where the site of commission is not known, priority must be given to the jurisdiction that requested extradition first.

§ 5.4.9. Requests for Extradition from another criminal jurisdiction

1. Where a Complaint has been filed or a judgment of conviction has been rendered against a person who resides in another criminal jurisdiction, the Prosecutor under Article 1.4 may file a request for that person's extradition from the other criminal jurisdiction.
2. The request for extradition must be sent to the other criminal jurisdiction through the Criminal Courts of Destiny.
3. A request for extradition must be accompanied by the documents and information set out in Section 5.4.2.

6. Sentencing Proceedings and Corrections

6.1. Sentencing Rules

§ 6.1.1. Sentencing Principles

1. In regulating the sentencing and treatment of Defendants who have been convicted of an offense ("Offenders"), consistent with CoD 7.2.1:
    a. the primary purposes of this Article shall be:
        i. to prescribe sentences within a range of severity proportionate to the gravity of offenses, the harms done to crime Victims, and the blameworthiness of Offenders;
        ii. to provide restitution to crime Victims; and
        iii. to guarantee that all criminal sanctions are administered in a humane fashion; and
    b. additional purposes of this Article include:
        i. to incapacitate dangerous Offenders;
        ii. to deter future criminal conduct;
        iii. to promote offender rehabilitation, preservation of families, and reintegration of Offenders into the law-abiding community;
        iv. to avoid the use of sanctions that increase the likelihood Offenders will engage in future criminal conduct;
        v. to ensure sentences are no more severe than necessary to achieve the purposes in Subsection 1.a;
        vi. to produce sentences across cases that are uniform in their reasoned pursuit of the purposes in Subsection 1.a; and
        vii. to maintain transparency, accountability, and credibility in sentencing and corrections.
2. Unless prohibited or limited by the Code of Destiny or the Eastern Caribbean Supreme Court, the Court shall exercise its authority consistent with the principles stated in this Section when determining the severity and types of sanctions to impose on convicted Offenders under Section 6.1.3.
    a. So long as not inconsistent with the primary purposes in Subsection 1.a, the Court may:
        i. consider factors relevant to the purposes of sentencing in this Section, consistent with Section 6.1.2; and
        ii. use its discretion in determining which, if any, of the additional purposes in Subsection 1.b to prioritize in sentencing based on the circumstances of the Defendant.
    b. Subject to Section 6.1.4, no sentence imposed by the Court may exceed the maximum authorized penalties for the offense or offenses of conviction as set forth in the relevant laws.
    c. Except for sentences under Sections 6.1.14 and 6.1.15, no sentence imposed by a Court may be less than the minimum term of incarceration for the offense or offenses of conviction unless:

i. prior to the commencement of trial under Article 5.1, the Defendant pleaded guilty to an offense or offenses pursuant to Section 4.1.2, in which case:
    1. upon motion by the Defendant, the Court must reduce by one-quarter the otherwise applicable term of incarceration for the admitted offense; and
    2. consistent with the principles in Section 6.1.1.1, the Court may reduce by up to one-half the otherwise applicable term of incarceration for the admitted offense; or

ii. after conviction, consistent with Sections 6.2.1 through 6.2.3, the Court determines that the otherwise applicable term of incarceration is inconsistent with Subsections 1 and 2.a and Sections 6.1.2 and 6.1.3, or conflicts with Chapters 1 or 7 of the Code of Destiny, including that it:
    1. constitutes cruel and unusual punishment—in violation of CoD 1.11.7 and CoD 7.1.2.10.1;
    2. is grossly disproportionate to the gravity of the offense and the culpability of the Offender—in violation of Section 6.1.1.1.a.i and 6.1.1.1.b.v, and CoD 7.1.2.10.3;
    3. produces unwarranted sentencing disparities among Offenders—particularly within the same case or across cases arising from the same or similar acts—in violation of Section 6.1.1.1.b.vi and CoD 1.13 and CoD 7.1.2.2 and 7.3.1.3; or
    4. otherwise undermines the legitimacy of the criminal justice system in sentencing and corrections—in violation of Section 6.1.1.1.b.vii.

3. Whenever it renders a sentencing decision, the Court shall provide an explanation of its reasons on the record. All findings of fact contemplated in this Section shall be made by the Court as provided in Sections 6.1.1.3 and 6.2.3 through 6.2.5.

§ 6.1.2. Sentencing Considerations

1. Except as provided in this Section, the Court shall give no weight to the following factors when determining the severity of sentences:
    a. the Defendant's protected attributes under CoD 1.13; and
    b. alleged criminal conduct on the part of the Defendant other than the current offense or offenses of conviction and criminal conduct admitted by the Defendant.
2. The Courts may only give weight to the Defendant's prior convictions and juvenile adjudications consistent with the following principles:
    a. If criminal history is used for purposes of assessing the Defendant's blameworthiness for the current offense or offenses, the Court shall consider that the Defendant has already been punished for the prior convictions.
    b. If criminal history is used for purposes of assessing the Defendant's risk of reoffending, the Court shall consider that the use of criminal history by itself may over-predict those risks.
    c. The Courts may only give weight to the Defendant's prior juvenile adjudications when the procedural safeguards attending the adjudications were comparable

to those of a criminal trial. If used at all, the weight of a prior juvenile adjudication shall be mitigated by the Defendant's age at the time of prior adjudication and be given decreasing value by the passage of time since that adjudication.

3. Notwithstanding Subsection 1, the Courts may consider the following factors when determining the severity and types of sanctions to impose on convicted Offenders:
    a. The Courts may consider the personal characteristics of the Defendant when indicative of circumstances of hardship, deprivation, vulnerability, or handicap, but only as grounds to reduce the severity of sentences that would otherwise be imposed.
    b. The Courts may consider the Defendant's gender when relevant to the treatment needs of the Defendant.
    c. The Courts may consider the Defendant's financial circumstances for the purpose of determining economic sanctions.

§ 6.1.3. Authorized Dispositions and Measurements

1. Subject to Sections 6.1.4, 6.1.14, and 6.1.15, following an individual's conviction of one or more offenses, the Court may sentence the Defendant to one or more of the following sanctions, listed by increasing severity:
    a. unconditional discharge as authorized in Section 6.1.5;
    b. economic sanctions as authorized in Sections 6.1.6 through 6.1.9;
    c. probation as authorized in Section 6.1.11; and
    d. incarceration and parole as authorized in Section 6.1.12.
2. Unless a mandatory minimum term of incarceration is required and is ineligible for relief under Section 6.1.1.2.c.ii, the Court may:
    a. suspend the execution of a sentence that includes a term of incarceration; and
    b. order that the Defendant:
        i. be placed on probation as authorized in Section 6.1.11; and
        ii. satisfy one or more economic sanctions as authorized in Sections 6.1.6 through 6.1.9.
3. Subject to Subsection 2, the Court may impose any combination of sanctions so long as the total severity of the sentence is proportionate to the seriousness of the offense or offenses. In measuring offense seriousness or sentence severity, the Court:
    a. may consider the effects on someone's ability to maintain an adequate quality of life—for Victims or Offenders, typically, as a result of the offense or the sentence, respectively—measured by the extent to which it impairs a typical law-abiding person's standard of living in terms of essential human interests, such as bodily integrity, autonomy, physical and mental health, privacy, and basic amenities;
    b. shall assess the proposed sanctions by evaluating the severity—or punitive bite—of each punishment option, taking into account:
        i. the type of sanction;
        ii. the duration or magnitude of punishment;
        iii. any relevant collateral consequences—such as the effects of extradition or exclusion likely to be applied to the Defendant under law—to the extent these can reasonably be determined; and

iv. the Defendant's individual circumstances that affect the burden of punishment—to the extent authorized under Sections 6.1.1.1.a and 6.1.1.2.a;

c. in addition to the authorized dispositions specified in this Code, may consider appropriate sentencing alternatives of equivalent punitive bite; and

d. shall include in the written decision under Section 6.1.1.3, a detailed rationale for the commensurability of distinct sanctions and the proportionality of the sentence imposed.

§ 6.1.4. Sentences upon Multiple Convictions

1. The Court is subject to this Section when imposing sentence on a Defendant who is:
   a. being sentenced in the same proceeding for more than one conviction;
   b. the subject of multiple criminal proceedings in Destiny, which have not been consolidated or joined pursuant to Sections 2.1.3 and 2.1.5, or in Destiny and another criminal jurisdiction; or
   c. already serving a sentence arising out of a different criminal case in Destiny or in another criminal jurisdiction.
2. Except as otherwise provided in this Section, multiple terms of incarceration shall run concurrently or consecutively as the Court determines when the sentence is imposed.
   a. The Court may order its sentence to be served concurrent with, or consecutive to, any sentence the Defendant is already serving—but the Court may not specify whether the sentence it imposes will be served concurrent with, or consecutive to, any pending sentence that has yet to be imposed in another jurisdiction or in Destiny.
   b. The Court shall not sentence to probation a Defendant who is under sentence of incarceration with more than 30 days remaining, or simultaneously impose a sentence of probation and a sentence of incarceration on separate counts.
3. In addressing the imposition of sentence in cases involving multiple convictions for the same Offender, whether imposed in a single proceeding or separate proceedings, or for a criminal offense committed while serving a different sentence or awaiting trial on another offense:
   a. there is a presumption in favor of consecutive sentences for a felony for which the prescribed maximum term of imprisonment is not less than 20 years, and a presumption in favor of concurrent sentences for all other offenses, where the latter presumption grows stronger the less severe the prescribed sanctions are for the relevant offense;
   b. to the degree feasible, the Court should seek to minimize disparity in total sentence severity for Offenders being sentenced for multiple convictions, whether the sentences are imposed consecutively in a single proceeding, separate proceedings in the same Court, or multiple proceedings in two or more Courts;
   c. in a single proceeding involving multiple convictions, a presumption exists that the Court should account for the existence of lesser current convictions when imposing sentence on the most serious offense for which the Defendant is being sentenced;
   d. Courts may depart from the presumptions established pursuant to Subsections 3.a through 3.c with adequate written explanation of the reasons; and

e. when consecutive sentences are imposed, there shall be a heavy presumption that the total sentence length should not exceed double the maximum sentence for the most serious of the Defendant's current convictions.

§ 6.1.5. Unconditional Discharge

1. Courts should impose a sentence of unconditional discharge when:
    a. a mandatory term of incarceration is not required or is inapplicable pursuant to Section 6.1.1.2.c.ii; and
    b. a more severe sanction under Sections 6.1.3 and 6.1.4 is not otherwise required to serve the purposes of sentencing in Section 6.1.1.1 and the sentencing considerations in Section 6.1.2.
2. In assessing whether such a sentence is appropriate in an individual case, the Court shall consider that unconditional discharge carries the following punitive effects:
    a. the stigma attached to the conviction itself;
    b. the fact that the instant conviction can be used as criminal history in a later prosecution of the Defendant; and
    c. the effects of extradition or exclusion likely to be applied to the Defendant under law.

§ 6.1.6. Economic Sanctions

1. The Court may impose a sentence that includes one or more economic sanctions under this Section, and Sections 6.1.7 through 6.1.9, for any offense.
2. The Court shall fix the total amount of all economic sanctions that may be imposed on the Defendant, and no Party may collect economic sanctions in excess of the amount approved by the Court.
3. The Court may require immediate payment of an economic sanction when the Defendant has sufficient means to do so, or may order payment in installments.
4. The time period for enforcement of an economic sanction, other than victim restitution, shall not exceed the length of the relevant statute of limitations, beginning from the date the sentence is imposed or the Defendant is released from incarceration, whichever is later.
5. If an economic sanction has not been paid as required, it may be reduced to the form of a civil judgment.
6. No economic sanction may be imposed unless the Defendant would retain sufficient means for reasonable living expenses and family obligations after compliance with the sanction. If the Court refrains from imposing an economic sanction because of this limitation, the Court may not substitute incarceration for the unavailable economic sanction.
7. The Court may provide incentives to the Defendant who meets identified goals toward satisfaction of economic sanctions—such as shortening the term of probation or post-release supervision, removing or lightening of sentence conditions, and fully or partially forgiving economic sanctions other than victim restitution.
8. If the Court imposes multiple economic sanctions including victim restitution, the Court shall order that payment of victim restitution take priority over the other economic sanctions.

9. A Court may modify or remove an economic sanction at any time, and shall do so for any economic sanction found to be inconsistent with this Section.

§ 6.1.7. Victim Restitution

1. The Court shall order that the Defendant make restitution to the Victim for economic losses suffered as a direct result of the offense of conviction, provided the amount of restitution can be calculated with reasonable accuracy.
2. The purposes of victim restitution are to compensate Victims for injuries suffered as a direct result of criminal conduct and promote the Defendant's rehabilitation and reintegration into the law-abiding community through the making of amends to crime Victims.
3. For purposes of this Section, "economic losses":
    a. includes, among other things, the cost of replacing or repairing property; reasonable expenses related to medical care, mental health care, funeral services, and similar costs; and lost income; but
    b. does not include pain and suffering, or similar non-economic or general damages; exemplary or punitive damages; or losses attributable to Victims' failure to take reasonable steps to mitigate their losses.
4. When more than one Victim has suffered economic losses as a direct result of the offense of conviction, the Court shall determine priority among the Victims on the basis of the seriousness of the losses each Victim has suffered and their economic circumstances.
5. When the criminal conduct of more than one person has caused a Victim's economic losses under this Section, including persons not before the Court, the Court shall set the amount of restitution owed by the Defendant to reflect his or her relative role in the causal process that brought about the Victim's losses.
    a. In exercising its discretion under this Subsection, the Court should consider the following factors:
        i. the number of persons believed to have contributed to the Victim's total economic losses;
        ii. the degree to which the Defendant played a direct or major role, relative to other persons, in bringing about the Victim's total economic losses; and
        iii. any other facts relevant to the Defendant's relative causal role in bringing about the Victim's economic losses.
    b. Joint and several liability for payment of the full amount of restitution may be imposed on the Defendant in the Court's discretion, when reasonable in light of the factors in Subsection 5.a.
6. The Court shall determine the amount of economic losses by a preponderance of the evidence.
7. A restitution order under this Section shall not preclude the Victim from proceeding in a civil action to recover damages from the Defendant.
    a. Any amount paid to a Victim by the Defendant under this Section shall be set off against any amount later recovered as compensatory damages by the Victim in a civil proceeding against the Defendant.

b. If the Victim has recovered economic losses from the Defendant prior to sentencing, the Court shall give credit for that recovery when calculating any amount of restitution to be ordered at sentencing against the Defendant.

§ 6.1.8. Fines

1. A person who has been convicted of an offense may be sentenced to pay a fine not exceeding any maximum fine listed in the relevant law or, where that law sets no limit, XCD 125,000. No fine may be imposed where that law authorizes none.
2. The purposes of fines are:
    a. to exact proportionate punishments;
    b. to further the goals of specific and general deterrence; and
    c. to avoid placing substantial burdens on the Defendant's ability to reintegrate into the law-abiding community.
3. The Court may adjust a fine in relation to the wealth or income of Offenders—so that the punitive bite of financial penalties will be comparable for Offenders of varying economic means—consistent with Section 6.1.3.3.a and 6.1.3.3.b, and the purposes in Subsection 2.

§ 6.1.9. Asset Forfeiture

1. Unless otherwise specified in the Code of Destiny, the Court may order that assets be forfeited following the Defendant's conviction for a felony. The purposes of asset forfeitures are:
    a. to incapacitate Offenders from criminal conduct that requires the forfeited assets for its commission; and
    b. to deter offenses by reducing their rewards and increasing their costs.
2. Assets subject to forfeiture include:
    a. proceeds and property derived from the commission of the offense;
    b. proceeds and property directly traceable to proceeds and property derived from the commission of the offense; and
    c. instrumentalities used by the Defendant or the Defendant's accomplices or co-conspirators in the commission of the offense.
3. Assets subject to forfeiture under Subsection 2.c may not be forfeited if:
    a. third parties are partial or joint owners and the assets are not reasonably separable—unless the third parties have been convicted of offenses for which forfeiture of the assets is an authorized sanction; or
    b. the asset is incidental to the offense; the owner relies upon the asset for lawful conduct; and forfeiture would increase the likelihood of recidivism, such as the asset being the owner's sole dwelling or mode of transport.
4. The Court shall dispose of the forfeited assets by public auction, unless:
    a. there is no lawful opportunity for ownership of the property under this Code, in which event the Court shall order the property destroyed; or
    b. the Court concludes that the cost of a public auction would probably exceed the highest bid, in which case the Court may order the property destroyed or may otherwise order such disposition as it deems appropriate.

§ 6.1.10. Costs

1. The Prosecutor shall initially bear the responsibility of paying all legal costs of a prosecution. The Defendant shall initially bear the responsibility of paying only the costs of Defense Counsel, if any, and to mount a defense. The Prosecutor and Defendant may be compensated for those costs as provided in this Section.
2. A Prosecutor who fails to obtain a conviction shall pay the reasonable legal costs of all Parties subject to the prosecution.
3. Upon exhaustion of any right to appeal, a Defendant convicted of a criminal offense shall pay the reasonable costs of prosecuting that offense, only, and of enforcing the sentence—including the costs of capture, transport, and custody.
4. Co-Parties shall bear joint and several liability for their shared legal costs, but no Party shall be held liable for such costs incurred in a case before or after being a Party to that case.
5. The Court may stay the determination of costs related to any motion made prior to or during trial—until after judgment and, in case of conviction, sentencing under this Article and Article 6.2.
    a. Parties other than the Prosecutor and the Defendant, including Victims and Intervenors pursuant to Section 4.2.5, may respond to any motion or claim without bearing any legal costs but their own—regardless of the outcome of the motion or claim—but such Parties shall bear the legal costs for any failed motion, claim, counterclaim, appeal, or cross-appeal that they make.
    b. The economic sanctions imposed upon the Defendant—or the costs imposed on any Party—shall be offset by the restitution (as defined by Section 6.1.7) and the costs owed to the successful movant under Sections 4.2.1.2.d and 4.2.3.4. If a successful motion is made prior to trial, the Court may stay the determination of restitution and costs until after judgment and sentencing, if any.
6. The Court shall issue a written decision giving reasons for its determination of costs.
    a. To achieve a reasonably just and fair outcome, the Court may deviate reasonably from the assessment of costs under this Section—so long as such deviation does not impose undue hardship or contravene Subsection 6.b.
    b. No court cost may exceed the amount deemed reasonable according to any applicable guidelines issued by the ECSC.
    c. On appeal, a Party may challenge the determination of costs as substantively unreasonable, with court costs pursuant to this Section subject to de novo review under Section 5.2.7.1.b, and all other cost determinations reviewed for clear error under Section 5.2.7.1.a.
7. Proceeds from disposition of seized property under Section 4.1.7, fines under Section 6.1.8, and asset forfeiture under Section 6.1.9, shall be applied, in order of priority, to:
    a. victim restitution;
    b. the court costs;
    c. the Prosecutor’s costs;
    d. costs related to the execution of a sentence; and
    e. such charitable funds as the Court believes may improve criminal justice.

§ 6.1.11. Probation

1. Unless the offense or offenses of conviction require a minimum term of incarceration, the Court may suspend execution of sentence and place the Defendant on probation if it will serve one or more of the purposes of sentencing under Section 6.1.1.1.
    a. The length of probation shall not exceed the length of any maximum term of incarceration for the offense or offenses of conviction, or one year for a misdemeanor conviction.
    b. Consecutive sentences of probation may not be imposed.
2. Under this Section, the Court may impose such conditions and regulations as will promote the Defendant's rehabilitation and reintegration into lawful society, reduce the risk of reoffending and protect the public, and hold him or her accountable for criminal conduct.
    a. Community service may be required under this Section. As appropriate, the Court may authorize victim-offender mediation under Section 6.2.6 and sentencing alternatives consistent with Section 6.1.3.3.
    b. The Court may authorize a Corrections Agent to supervise the Defendant while on probation and to enforce the terms imposed by the Court. The Court may also authorize the Agent to issue instructions:
        i. consistent with the conditions and regulations imposed by the Court; and
        ii. necessary for the implementation of such conditions and regulations.
    c. All conditions of probation must be incorporated into a Court's written order, and a copy thereof must be given to the Defendant. In addition, the Court or supervising Agent shall explain to the Defendant the purpose and scope of the imposed conditions and regulations, and the consequence of violating those conditions and regulations.
3. Probation terminates automatically on successful completion of the term of probation set by the Court.

§ 6.1.12. Incarceration

1. A person convicted of a criminal offense may be sentenced to incarceration as authorized in this Section. “Incarceration” in this Code includes confinement in prison, jail, or any other detention or correctional facility.
2. Subject to any minimum term of incarceration, the length of any term of incarceration shall be no longer than needed to serve the purposes for which it is imposed, including:
    a. when incarceration is necessary to incapacitate dangerous Offenders; or
    b. when other sanctions would depreciate the seriousness of the offense and foster disrespect for the law.
3. In deciding whether to impose incarceration, any non-custodial sentence should have sufficiently equivalent deterrent and incapacitating effect as the otherwise applicable sentence of incarceration—but a sentence of incarceration of no more than 60 days may be imposed, with the Defendant’s consent, as an alternative to a sentence of probation.
4. Unless modified under Sections 5.1.5 and 5.1.6, a Defendant sentenced to a term of incarceration shall be released after serving the term imposed by the Court reduced

by credit for time served. At the time of sentencing, the Court shall enter a specific finding of the number of days for which sentence credit is due. Counting as a "day" any portion of a day spent in custody, the Defendant shall be given credit toward the service of his or her sentence for:

a. days spent in custody in connection with the course of conduct for which sentence was imposed, including:
    i. custody while awaiting or undergoing trial and while awaiting sentence; and
    ii. any detention in a holding cell, jail, prison, locked therapeutic facility, or any other form of physical restraint—including home detention—that is the functional equivalent of custody;
b. days credited against sentences to be served concurrently pursuant to Section 6.1.4; and
c. days served on an earlier sentence for the same offense when the current sentence was imposed following proceedings in which the earlier sentence was vacated.

5. Courts may impose post-release supervision (parole) to follow a term of incarceration, so long as the total length of incarceration and parole together does not exceed the maximum term of incarceration for the offense or offenses under Section 6.1.4 or the relevant law. In deciding whether to impose post-release supervision—and, if so, what conditions and regulations to impose consistent with Section 6.1.3.3—the Court shall consider the need:
    a. to hold Offenders accountable for their criminal conduct;
    b. to promote their rehabilitation and reintegration into law-abiding society;
    c. to reduce the risks that they will commit new offenses; or
    d. to address their needs during their transition from incarceration to the community.

§ 6.1.13. Exclusion

1. A person is subject to exclusion from the Area upon conviction of:
    a. any felony for which the prescribed maximum term of imprisonment is not less than 15 years, as well as any felony involving violence, incitement to violence, terrorism, or the support of terrorism; or
    b. Zone Trespass pursuant to Section 1.10.3.
2. The execution of an order of exclusion:
    a. under Subsection 1.a shall be stayed until the completion of any term of incarceration—or any portion thereof by order of the Court—at which point the order shall be executed immediately; or
    b. under Subsection 1.b shall be immediate.
3. A person excluded under this Section shall—to the extent deemed reasonable by the supervising Court Marshal—be given a choice as to the place they are sent and the method of travel, which shall be at his or her own expense.

§ 6.1.14. Sentencing of Juvenile Offenders

1. The following provisions shall apply to the sentencing of a Defendant under 18 years of age at the time of commission of an offense:

a. When assessing the Defendant's blameworthiness under Section 6.1.1.1.a.i, the Defendant's age shall be a mitigating factor, to be assigned greater weight the younger his or her age.
b. Except as provided in Subsection 1.c, priority shall be given to the purposes of offender rehabilitation and reintegration into the law-abiding community per Section 6.1.1.1.b.iii, and the Court may authorize victim-offender mediation under Section 6.2.6. Circumstances relevant in ordering a non-custodial sentence include the following:
    i. the Defendant's conviction is for any offense other than a felony for which the prescribed maximum term of imprisonment is not less than 15 years;
    ii. there is a reliable basis for belief that the Defendant presents a low risk of serious violent offending in the future, and his or her offense did not result in the death of another person;
    iii. the Defendant was an accomplice who played a minor role in the criminal conduct of one or more other persons; and
    iv. the availability of appropriate sentencing alternatives consistent with Section 6.1.3.3.
c. When the Defendant has been convicted of a serious violent offense, and there is a reliable basis for belief that the Defendant presents a high risk of serious violent offending in the future, priority may be given to the goal of incapacitation under Section 6.1.1.1.b.i.
d. The Court shall have authority to impose a sentence that deviates from any mandatory-minimum term of incarceration under the law.
e. For any offense or combination of offenses, for a Defendant under:
    i. 18 years of age at the time of commission, no sentence of incarceration longer than 25 years may be imposed;
    ii. 16 years of age at the time of commission, no sentence of incarceration longer than 15 years may be imposed; or
    iii. 14 years of age at the time of commission, no sentence of incarceration longer than 10 years may be imposed.

2. The Court may apply this Section when sentencing a Defendant who is between 18 and 20 years of age at the time of commission of the offense, when substantial circumstances establish that this will best effectuate the purposes stated in Section 6.1.1.1.
3. No person under 18 years of age shall be housed in any adult correctional facility.

§ 6.1.15. Sentencing upon Conviction of Guilty but Mentally Ill

1. Notwithstanding any other provision of this Code, after the Defendant is found to be guilty but mentally ill under Section 1.5.8, the Court shall:
    a. determine to what extent the circumstances regarding the Defendant and the offense or offenses indicate that the Defendant's history, character, and condition reveal a substantial risk that the Defendant will be a danger to others, and that the Defendant's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with reckless disregard for the consequences;

b. based on the determination under Subsection 1.a, sentence the Defendant to be detained in a secure and humane mental health facility—principally for purposes of incapacitation and rehabilitation—for the term, if any, of custodial control that would otherwise apply upon conviction finding the Defendant guilty as charged; and
c. not order the Defendant to pay a fine.

2. Prior to sentencing under this Section, the Court shall:
    a. obtain a presentence report pursuant to Sections 4.4.2, 4.4.3, and 6.2.2—and a report addressing the concerns of Subsection 1.a—written by a psychiatrist or other qualified mental health expert who has evaluated the Defendant; and
    b. ensure the Prosecutor and Defendant have:
        i. sufficient time to inspect the reports under Subsection 2.a;
        ii. the right to compulsory process of relevant witnesses, and to cross-examination of such witnesses as appear before the Court; and
        iii. the opportunity to be heard concerning the sentencing.

6.2. Sentencing Proceedings

§ 6.2.1. Party Submissions

1. Prior to sentencing, the Prosecutor and Defendant shall submit to the Court their respective positions on the appropriate disposition under Article 6.1.
    a. The submissions should discuss:
        i. the criminal offense or offenses of conviction;
        ii. the applicable legal provisions;
        iii. the circumstances attending the commission of crime;
        iv. the effect on any identified Victim;
        v. the Defendant’s criminal history, physical and mental condition, and family situation and background; and
        vi. any other matters relevant to assessing an appropriate sentence.
    b. The Prosecutor and the Defendant may make their submissions following their receipt of any presentence report pursuant to Section 6.2.2—along with any objections to the contents of such report pursuant to Section 6.2.2.4.
    c. The Prosecutor shall disclose to the Defendant any information within the Prosecutor's possession or control, not already disclosed, that would tend to reduce the punishment to be imposed.
2. A Victim may submit a written victim impact statement to the Court prior to sentencing.
    a. Any statement provided to the Court under this Subsection shall be shared with the Defendant and Prosecutor—within a reasonable time in advance of the sentencing hearing, or as ordered by the Court.
    b. The Court shall provide the Defendant and Prosecutor reasonable opportunity to challenge the factual assertions in any statement submitted pursuant to this Subsection.
3. Other Parties or Intervenors under Section 4.2.5 may also make submissions by leave of the Court.

§ 6.2.2. Presentence Report

1. On written motion of either Party, or on the Court's own motion, the Court may require a written report of a presentence investigation. The report shall be independent of the Parties but otherwise prepared, presented, and used as provided by court order.
2. The presentence report may contain, but is not limited to, the following information:
    a. a description and relevant analysis of the offense or offenses and the surrounding circumstances, not limited to aspects developed for the record as part of the determination of guilt;
    b. a statement of the Defendant's criminal and juvenile record, if any;
    c. a statement considering the economic, physical, and psychological impact of the offense on any Victim and the Victim's immediate family;
    d. the Defendant's financial condition;
    e. a description of the Defendant's educational and employment background, including present employment status and capabilities;
    f. the social history of the Defendant, including family relationships and obligations, past and present residences, and any history of substance abuse;

g. if incarceration is included in the sentence, information about:
    i. the correctional facilities to which the Defendant might be sent;
    ii. the Corrections Agencies that run such facilities; and
    iii. the estimated costs of incarceration;
h. information about environments to which the Defendant might return—or to which the Defendant could be sent—should release under Section 6.1.5, or probation pursuant to Section 6.1.11, be granted;
i. information about special resources that might be available to assist the Defendant, such as programs for treatment, rehabilitation, education, or vocational training;
j. information on the Defendant's physical and mental condition—including any court-ordered physical and mental examination of the Defendant—but the Defendant may not be compelled to make any statement in connection with the presentence investigation; and
k. any other information the Court deems relevant in assessing an appropriate sentence for the criminal offense or offenses of conviction.

3. Such a report must, if requested, be presented to and considered by the Court before imposition of sentence or other disposition.
    a. The Court shall provide the Prosecutor and the Defendant with a copy of the complete report and recommendations at least 10 days before sentencing.
    b. Before making the report available to the Parties, the Court may issue an appropriate protective order regarding sensitive information for the safety of witnesses, or an order to limit the disclosure of otherwise-protected confidential information.
4. Before the sentence hearing, each Party shall notify the Court and all other Parties of any objection it has to the contents of any report. Prior to the pronouncement of sentence pursuant to Sections 5.1.4, 5.1.5, and 6.2.4, the Parties shall be given fair opportunity to contest or supplement factual information contained in the report.
5. After sentencing, a copy of the final version of the presentence investigation report and any mental health examination shall be transmitted to the Corrections Agency to whose custody the Defendant is committed. A copy of the report, redacted in accordance with any court-issued protective order, shall also be provided to the Defendant.

§ 6.2.3. Sentence Hearing

1. The Court shall conduct a sentence hearing unless waived by the Parties with consent of the Court.
    a. The sentence hearing may commence immediately after a determination of guilt, or it may be continued to a later date. If a presentence report is required, the sentence hearing shall not be conducted until copies thereof have been furnished or made available to the Court and the Parties per Section 6.2.2.
    b. Sentencing proceedings shall be governed by evidentiary rules pursuant to Section 3.1.4.3.c.vii, in conformity with this Article. At sentencing, the Court may rely upon:
        i. facts necessary to the conviction;
        ii. facts admitted by the Defendant; and
        iii. facts in the presentence report that are not contested by the Parties.

c. Subject to Section 6.2.4, the Court shall make any findings of fact and conclusions of law at sentencing. The Court shall provide on the record an explanation of the reason for its resolution of any disputed matters of fact or law relevant to the sentence.

2. The Court shall make its own determination of any legal issues raised by a presentence report requisitioned under Section 6.2.2.
3. When either Party raises a factual issue in a presentence report that is relevant to the sentence, the Prosecutor shall bear the burden of proving the disputed fact by clear and convincing evidence. Other disputed facts shall be determined by the preponderance of evidence.
4. Evidence may be presented by both the Prosecutor and the Defendant as to any matter that the Court deems probative on the issue of sentence, including any facts in aggravation or in mitigation of the penalty.
5. A Victim may make an oral victim impact statement of reasonable length at the sentencing hearing.
    a. A victim impact statement may be unsworn, unless the Victim elects to provide testimony under oath, in which case the Defendant shall have the right to cross-examine the Victim.
    b. In a case with multiple Victims, the Court may fashion an appropriate process for receipt of victim impact information at the sentencing hearing.
    c. The content of a victim impact statement shall relate solely to the impact of the crime on the Victim and the Victim's family. The impact statement may not address alleged criminal conduct for which the Defendant has not been convicted.
6. As necessary, the Court may order the report to be corrected, clarified, excised, or supplemented prior to imposing sentence.

§ 6.2.4. Pronouncement of Judgment and Sentence

1. Consistent with Section 5.1.4, judgment shall be pronounced in open court, setting forth the findings and adjudication.
2. In pronouncing sentence under Section 5.1.5, the Court shall:
    a. afford the Defendant an opportunity—personally or through Defense Counsel—to make a statement on the Defendant's behalf before imposing sentence;
    b. state that a credit will be allowed on the sentence, as provided by law, for time during which the Defendant has been incarcerated on the present charge;
    c. explain to the Defendant the terms of the sentence; and
    d. inform the Defendant as to his right to appeal—but if he has entered a plea of guilty, the Court shall advise the Defendant of the right to appeal only in those cases in which he has:
        i. entered a plea of guilty, but before doing so the Defendant expressly reserved the right to appeal with respect to a particular issue or issues; or
        ii. filed a timely motion to withdraw the plea of guilty, and the motion has been denied—either by order of the Court or by operation of law.

3. The judgment of conviction and the sentence thereon are presumptively complete and valid as of the time of their pronouncement in open court. The exact terms of the judgment and sentence shall be entered in the Court's minutes.

§ 6.2.5. Execution

1. Upon pronouncement of conviction and sentence under Section 6.2.4, the Court shall:
    a. issue a court order stating the exact terms of the judgment and sentence;
    b. transmit any unregistered materials to the Registry and ensure that the case record is accurate and complete;
    c. appoint a Court Marshal Agency:
        i. to carry out the court order, including taking custody of the Defendant to deliver him or her to the Agency in Subsection 1.d—along with a signed, certified copy of the judgment of conviction and sentence;
        ii. to receive and retain according to law all physical papers, documents, and records filed in the proceedings, and all evidence admitted in the criminal case;
        iii. to monitor the Parties' compliance with the judgment and sentence, including:
            1. the implementation or observance of specific terms of any sanction imposed by the Court;
            2. the conditions of confinement or other custodial sanction consistent with Article 6.3; and
            3. any correctional violations, including violations of probation and post-release supervision, under Article 6.3; and
        iv. to make any necessary and reasonable decisions about the execution of the sentence on behalf of the Court, subject to review pursuant to Section 6.3.3; and
    d. with input from the Prosecutor and Defendant, appoint an appropriate Corrections Agency to carry out the judgment and implement the sentence, subject to appeal pursuant to Article 5.2 and, as appropriate, collateral review under Article 5.3.
2. Unless specifically provided by court order, a judgment and sentence—including costs under Section 6.1.10—shall be executed as soon as legally enforceable.
3. All Parties are under an obligation to comply with the judgment and sentence, as applicable, and to cooperate in its execution.

§ 6.2.6. Victim-Offender Mediation

1. In appropriate criminal cases—including those involving sentencing under Sections 6.1.1.2.c.i and 6.1.14—Trial Courts may authorize the use of victim-offender mediation, consistent with the safeguards set forth in this Section, to help devise a final disposition at sentencing.
    a. In determining whether a case is appropriate, the Court should consider factors such as the relationship between the Parties, the nature and severity of the offense, and any imbalances of power between the Defendant and the Victim.
    b. With notice to the Parties and opportunity to be heard, the Court shall appoint a neutral, trained mediator—or other qualified professional—to facilitate the

process. Any Judge who has participated in the case may not serve as mediator.

2. As used in this Section, victim-offender mediation or conferencing is any formalized opportunity for guided exchange between one or more Defendants and crime Victims. The primary purpose of any such process should be:
    a. to repair harm to Victims, families, and communities;
    b. to facilitate the rehabilitation and reintegration of Offenders into the law-abiding community; and
    c. to increase a sense among Victims and Offenders that their views have been heard and that a fair process has been employed for the resolution of harm caused by acts of crime.
3. Victim-offender mediation should be used only when all participating Victims and Defendants have given informed consent to participation.
    a. With the consent of participating Victims and the Defendant, a victim-offender conference may include additional participants—such as friends and family members of Victims and of the Defendant, and representatives of the community in which the offense occurred—and may require that some or all additional participants join in any agreement on a recommended disposition.
    b. A participant should be permitted to withdraw at any time from participation with no prejudice to the continuation of the case in a traditional adjudicative forum.
4. Any agreed-upon disposition reached by the participants must be presented to the Court for approval.
    a. Before approving a recommended disposition, the Court must find that:
        i. the participants have freely consented to the recommendation; and
        ii. the recommended disposition is not disproportionate to the offense— in violation of Section 6.1.1.1.a.i and 6.1.1.1.b.v, and CoD 7.1.2.10.3— and is otherwise allowed by this Code.
    b. If the Court approves the recommended disposition, the disposition should be allowed to supplant any or all other authorized dispositions.
    c. If a victim-offender conference does not yield agreement on an appropriate disposition—or if the Court refuses to approve a recommended disposition—then all other originally authorized sentencing dispositions should be available.
    d. When a victim-offender conference does not yield an agreement on an appropriate disposition, no admission made by the Defendant as part of that process should be admissible in any proceeding against the Defendant.

6.3. Detention, Corrections, and Compliance

§ 6.3.1. Basic Detention Standards

1. Any person detained pursuant to a lawful Warrant, court order, or judgment and sentence ("Detainee"), shall be treated with the respect due to their inherent dignity and value as human beings, and consistent with the standards of this Article.
2. Persons held in custody prior to pronouncement of judgment and sentence are presumed to be innocent and shall be treated as such. Consistent with the reasons for their detention pursuant to Sections 4.1.3 through 4.1.6 and any court order, such persons must:
    a. be provided reasonable accommodations to tend to their personal or business affairs and carry out their lawful responsibilities unimpeded and in privacy;
    b. be able to wear their own clothes if they so choose;
    c. be able to order food from outside the detention facility, to the extent possible and reasonable, at their own expense;
    d. consistent with maintaining a safe and secure facility, be given the widest possible latitude:
        i. in the things or objects they may bring for purposes of entertainment, study, or work; and
        ii. in visitation rights; and
    e. not be subject to the provisions of Section 6.3.7.
3. Different categories of Detainees shall be kept in separate institutions—or parts of institutions—taking account of, among other things, their sex, age, the legal reason for their detention, and the necessities of their treatment.
    a. Detainees under Subsection 2 shall be kept separate from convicted Offenders.
    b. Detainees under Sections 4.4.1 and 6.1.15 shall be kept in a separate, secure and humane mental health facility.
    c. Men and women shall be detained in separate institutions.
    d. Consistent with Section 6.1.14.3, adults and juveniles shall be detained in separate institutions.
    e. To the extent possible, Detainees convicted of violent offenses shall be kept separate from those who have not.
    f. Detainees convicted of offenses involving complicity or conspiracy—or for which there is probable cause to believe they are members of violent criminal organizations or organizations advocating violence—shall, to the extent possible, be kept separate from accomplices, co-conspirators, or other members of the same violent criminal groups, provided that such measures are reasonably expected to reduce the likelihood of recidivism.
4. Prior to final disposition, all disputes regarding whether detention conditions comply with this Article shall be adjudicated by the relevant Court.

§ 6.3.2. Correctional Authority

1. Except where a Court retains jurisdiction under Section 6.3.1.4, all decisions with respect to the execution of a sentence shall be made according to this Section.

2. The Corrections Agency appointed pursuant to Section 6.2.5.1.d shall be responsible in the first instance for making determinations concerning relevant conditions of supervision or confinement that are not defined by court order or the instruction of a Court Marshal, including:
    a. detention facility regulations and their general enforcement through disciplinary measures;
    b. time, place, and reporting of any community service, drug testing, counseling, probation or parole meetings, and similar conditions or requirements;
    c. methods of location or behavioral monitoring; and
    d. methods of collecting and handling economic sanctions.
3. The Corrections Agency is required to promptly report to the Court Marshal appointed pursuant to Section 6.2.5.1.c:
    a. any significant changes to the conditions of confinement, including to:
        i. the location of incarceration;
        ii. the level of security applied; and
        iii. the published rules of incarceration pursuant to Sections 6.3.8.1 and 6.3.12.2;
    b. any period during which instruments of personal restraint are used, and the form thereof;
    c. any injuries, deaths, or recommendations from qualified healthcare professionals that might reasonably call for a change to conditions of confinement; and
    d. any searches, seizures, warnings, or disciplinary procedures undertaken against a Detainee, against a Probationer under Section 6.1.11, or against a Parolee under Section 6.1.12.5.
4. The appointed Court Marshal shall:
    a. be responsible for making any provisional determinations concerning:
        i. the details of exclusion orders;
        ii. whether and to what extent a minor child may stay with a Detainee under Section 6.3.10;
        iii. deferment of sentences;
        iv. interest and fees on unpaid fines; and
        v. any other expenses incurred or likely to be incurred by enforced collection;
    b. promptly review all reports made under Subsection 3, and inform the listed next of kin and Attorney, if any, of:
        i. the substance of such reports regarding the Detainee, Probationer, or Parolee; and
        ii. as appropriate, any other matters relating to the wellbeing, location, or status of a Detainee, subject to the Detainee's written preferences;
    c. in person, inspect the Detainee's institution not less than every six months, during which inspection the Court Marshal shall have authority to speak to the Detainee and any assigned Corrections Agent confidentially, and view any area of the facilities in which the Detainee has been held—and after which the Court Marshal shall enter a thorough written report into the Detainee's record;
    d. have authority to issue written instructions to the Corrections Agency to remediate any failings the Court Marshal has probable cause to believe exist;

e. report to the Prosecutor (or successor) on any reasonable request regarding the compliance of the Detainee, Probationer, or Parolee with the provisions of a court order; and
f. summon a Collateral Court pursuant to Section 5.3.1 if the Court Marshal believes:
    i. a Corrections Agency has broken the law or failed to follow reasonable instruction; or
    ii. based on the behavior of the Detainee, Probationer, or Parolee, the interests of justice would be best served by a modification of the terms of the sentence.

§ 6.3.3. Correctional Review

1. Any Detainee, Probationer, or Parolee who has probable cause to believe the conditions or enforcement of his sentence are not in compliance with the orders of the Court or the requirements of this Article may:
    a. if the grievance is with the Corrections Agency:
        i. raise the grievance with their appointed Corrections Agency; and then
        ii. if the matter is deemed to be unresolved within a reasonable time, raise the grievance with their appointed Court Marshal, who may order the Corrections Agency to modify the conditions of supervision or confinement in light of the violation or grievance to address identified risks and needs; and then
        iii. if the matter is still deemed to be unresolved within a reasonable time, petition for appropriate relief from a Collateral Court appointed pursuant to Section 5.3.1; or
    b. if the grievance is with the Court Marshal:
        i. raise the grievance with the Court Marshal; and then
        ii. if the matter is deemed to be unresolved within a reasonable time, petition for appropriate relief from a Collateral Court appointed pursuant to Section 5.3.1.
2. Any Court Marshal or Corrections Agency that has probable cause to believe the conditions of a sentence are being violated by the Detainee, Probationer, or Parolee, must:
    a. issue a formal warning in writing, describing the nature of the violation; and then
    b. if either the Court Marshal or Corrections Agency considers the matter to be unresolved within a reasonable time, seek review of the alleged violation by petition to a Collateral Court appointed according to Section 5.3.1.
3. Under Subsections 1 and 2, a reasonable time shall not be less than 72 hours—unless the matter relates to:
    a. the immediate health and physical wellbeing of the Corrections Agents, or of the Detainee, Probationer, or Parolee; or
    b. the potential of the Detainee, Probationer, or Parolee to escape supervision or incarceration.
4. If a Corrections Agency objects to a Court Marshal's instruction or decision regarding a Detainee, Probationer, or Parolee in its care or under its supervision, the Agency

may summon a Collateral Court pursuant to Section 5.3.1 to make a determination as to the reasonableness of the instruction or decision.

5. A Collateral Court appointed under this Section:
    a. shall have authority and jurisdiction under Section 2.2.8;
    b. shall notify all Parties (or successors) of the proceedings;
    c. shall seek reports from the assigned Corrections Agency and Court Marshal on the matter;
    d. shall decide matters by a preponderance of the evidence; and
    e. may, in addition to other remedies, redress the incident and seek to prevent its reoccurrence by:
        i. providing a warning and formal reprimand;
        ii. modifying the conditions of supervision or confinement, in light of the violation or grievance, to address identified risks and needs;
        iii. limiting or prohibiting the responsible Corrections Agent or Agents from having authority over or interacting with the aggrieved Detainee, Probationer, or Parolee;
        iv. ordering the replacement of the Corrections Agency or Court Marshal responsible for execution of the sentence; and
        v. modifying the terms of the sentence—within the legal boundaries set by the offense or offenses of conviction, and according to the purposes defined in Section 6.1.1.

§ 6.3.4. Principles of Detention and Incarceration

1. Corrections Agencies and their supervising Court Marshals shall ensure that the conditions of confinement are in compliance with any relevant court order; the detention standards in Section 6.3.1; and, for convicted and incarcerated Offenders, the purposes of sentencing in Section 6.1.1.1.
    a. Incarcerated Offenders shall be guaranteed personal safety and subsistence, and shall be provided reasonable medical care, mental health care, and opportunities to rehabilitate themselves and to prepare for reintegration into the law-abiding community upon their release.
    b. A Corrections Agency shall seek to minimize any differences between life in detention and life at liberty that tend to lessen the responsibility of convicted Offenders or the respect due to their dignity as human beings.
2. Corrections Agencies shall maintain confidential detainee records with a Registry—accessible by the Detainee and their Attorney, if any, and the appointed Court Marshal—which, among other things, shall include:
    a. details recorded upon admission, including:
        i. identifying details of the Detainee and the appointed Court Marshal;
        ii. for convicted Offenders, a copy of the judgment of conviction and sentence, and any other related court orders;
        iii. an assessment of physical health and needs completed by a qualified healthcare professional;
        iv. the day and hour of his or her admission and anticipated release;
        v. an inventory of his or her personal property; and
        vi. details of next of kin; and
    b. details recorded in the course of detention, including:

i. information related to the Detainee's ongoing judicial processes, such as dates of court hearings and legal representation;
ii. information related to behavior, discipline, and sanctions imposed;
iii. details of all grievances submitted; and
iv. all further health assessments—including details of the circumstances and causes of any injuries or death and, if the latter, the destination of the remains.

§ 6.3.5. Detention Facility Personnel

1. Qualified Corrections Agents, under the direct supervision of a Senior Corrections Agent, shall be assigned the nondelegable responsibility for the safety, security, and discipline of Detainees, subject to review as provided in this Code. Corrections Agents shall be expected to speak the language of the majority of the Detainees at the facility to which they are assigned.
2. Annual training for Corrections Agents must be comprehensive and shall include at minimum:
    a. the requirements of this Code in relation to their duties, conditions of confinement, and the rights of Detainees;
    b. the maintenance of security and safety—including the use of proportionate force and instruments of restraint, and the management of violent Offenders—with due consideration of preventive and defusing techniques, such as negotiation and mediation;
    c. first aid, the psychosocial needs of Detainees, and the corresponding dynamics in confinement—as well as social care and assistance, including early detection of mental health issues; and
    d. specialized training for those working with certain categories of Detainees that involve additional risks or needs, or for those assigned other specialized functions.
3. Corrections Agents assigned to a facility shall be of the same sex as the Detainees, and any other staff member shall be accompanied by such Agent for the duration of any contact with a Detainee of the opposite sex.
4. Corrections Agents shall not use force in their relations with the Detainees, except in self-defense, in cases of attempted escape, or as a controlled response to physical resistance against an order based on law or regulations.
    a. Detention facility staff who have recourse to force must use no more than is strictly necessary, and must report the incident immediately to a Senior Corrections Agent and the Corrections Agency.
    b. Except in special circumstances, facility staff who perform duties bringing them into direct contact with Detainees should not be armed; and in no circumstances should facility staff be provided with arms unless they have been trained comprehensively in their use.

§ 6.3.6. Facilities and Accommodations

1. Detainees shall be allocated, to the extent possible, to detention facilities close to their homes or their places of social rehabilitation.
2. Detainees shall at all times have:

a. access to clean running water, a basin, and a toilet; and
b. lighting sufficient to read if they so choose.

3. Each Detainee shall occupy by night a cell or room alone, with:
    a. space sufficient to stand or lie fully stretched out;
    b. a bed longer than their height with clean bedding appropriate to the climate; and
    c. space to store books, a change of clothes, and such personal items as are allowed by detention facility rules.
4. All places where Detainees are required to live or work during the day shall:
    a. be maintained at a temperature appropriate to the maintenance of good health, and with appropriate ventilation;
    b. include appropriate space, seating, and desks to allow a range of productive activities;
    c. have access to natural light sufficient to read if they so choose;
    d. allow access to the open sky for at least an hour a day;
    e. allow access to exercise space and safe exercise equipment sufficient to maintain a good standard of physical fitness for at least an hour per day, and with basic physical instruction available upon request;
    f. allow access to a library, adequately stocked with both recreational and instructional books;
    g. allow access to facilities reasonably required for religious observances; and
    h. allow access to heated and private showers and the means for maintaining personal hygiene for at least half an hour per day.
5. All detention facilities shall be:
    a. under the supervision and control of Corrections Agents pursuant to the requirements of Section 1.7.2;
    b. secured to a degree appropriate to the relative danger to the public presented by the Detainees within;
    c. subject to constant recording in all non-private areas, to be retained for the applicable statute of limitations; and
    d. kept scrupulously clean at all times.
6. When Detainees are being removed to or from an institution, they shall be transferred in reasonable comfort and exposed to public view as little as possible, with reasonable safeguards adopted to protect them from insult, curiosity, and publicity.

§ 6.3.7. Correctional Deterrence

1. Appreciating that incarceration that results in cutting off persons from the outside world is afflictive by the very fact of taking from these persons the right of self-determination, the Corrections Agency shall ensure that conditions of confinement for convicted Offenders are aligned with the deterrent purpose of sentencing in Section 6.1.1.1.b.ii.
2. Subject to court order, conditions of confinement for convicted Offenders shall not:
    a. be set in accommodations or facilities that would be considered luxurious by a reasonable person of median income in the wider community;
    b. allow access to alcohol or other intoxicating substances, including non-therapeutic drugs;
    c. provide for more than an hour per day of idle entertainment unrelated to education, rehabilitation, physical training, or self-improvement;

d. allow privileges or purchases to create highly significant inequality in the relative quality of life of different convicted Offenders; or
e. exceed in general terms the day-to-day quality of life enjoyed by a person of median income in the wider community.

3. A Prosecutor (or successor) may lodge a written and substantiated grievance with the appointed Court Marshal if they believe the requirements of this Section are not being met—and if the Corrections Agency or Detainee disagrees with the grievance, the Prosecutor may summon a Collateral Court pursuant to Section 5.3.1 to determine whether the conditions of confinement should be amended.

§ 6.3.8. Detainee Wellbeing

1. Detainees shall be given suitable orientation information upon admission:
    a. to allow them to understand the facilities, rules, and rights available to them; and
    b. to enable them to adapt to the life of the detention facility.
2. Detainees shall be provided at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served, with due regard for allergies, intolerances, and moral or religious practices.
3. Detainees shall have access at their own expense to the same health care services that are commonly available in the community; and the detention facility shall be equipped to ensure prompt on-site application of emergency assistance and treatment of infectious diseases sufficient to maintain the general wellbeing of the detainee population.
    a. Clinical decisions may only be taken by the responsible health-care professionals, and may not be overruled or ignored by non-medical facility staff.
    b. The relationship between the physician—or other health-care professionals—and the Detainees they treat, shall be governed by the same ethical and professional standards as those applicable to patients in the community.
4. Detainees shall be allowed to wear their own clothes or be provided suitable clothing that is clean and fit for use—at the Corrections Agency's discretion—and given access to washing and drying facilities sufficient for the maintenance of good hygiene.
5. Detainees shall be allowed to keep personal property that does not represent a danger to them or other Detainees, and that:
    a. collectively fills less than a cubic meter;
    b. is useful to their legal defense, education, productiveness, or rehabilitation;
    c. is necessary to religious observance; or
    d. is of a small and sentimental nature.
6. All personal effects that the Detainee is not allowed to retain under detention facility regulations shall be placed in safe custody.
    a. An inventory thereof shall be signed by the Detainee on receipt of the effects, and again on their return; and steps shall be taken to keep such effects in good condition.
    b. If a Detainee brings any drugs or medicine into a detention facility, a qualified health-care professional shall decide what use shall be made of such drugs or medicine.
7. Detainees may be required to keep their persons, property, and assigned spaces clean for the benefit of themselves and fellow Detainees.

§ 6.3.9. Community Contact and Notification

1. Detainees shall be allowed, under necessary supervision, to communicate at regular intervals with their Attorney, family, friends, healthcare professionals, religious authorities, and, in the case of foreign nationals, diplomatic and consular representatives:
    a. by corresponding remotely; and
    b. by receiving visits—including conjugal visits—in which event visitors may be required to submit to reasonable searches.
2. Access under Subsection 1 shall be no less than weekly and due consideration shall be given to more regular meetings in the case of Detainees with:
    a. parental responsibility;
    b. diagnosed psychosocial conditions, such that more regular contact would be constructive to good discipline, good health, or rehabilitation; or
    c. ongoing legal proceedings or medical treatment, in which case access to the relevant Parties shall be as required.
3. The Corrections Agency shall inform a Detainee at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the Detainee should be authorized to go, either under escort or alone, to the bedside or funeral of a near relative or significant other who is critically ill or deceased.
4. Upon a death in detention, a deceased Detainee's body shall be treated with respect and dignity, and:
    a. returned to his or her next of kin as soon as reasonably possible or, at the latest, upon completion of the investigation in Subsection 5; or
    b. given a culturally appropriate funeral by the Corrections Agency if there is no other responsible party willing or able to do so, of which a full record shall be kept.
5. Any death in detention shall be the subject of full and comprehensive investigations and reports—by both the Corrections Agency and the Court Marshal, independently—which reports shall be:
    a. completed with all due haste, and returned to any next of kin or counsel specified by the Detainee prior to their death; and
    b. recorded in the Detainee's record with the Registry.

§ 6.3.10. Families, Children, and Mothers

1. The Corrections Agency shall make all reasonable efforts to encourage juvenile Detainees to engage in educational or rehabilitative activities for up to six hours per day.
2. A decision to allow a minor child to stay with his or her detained parent shall be based on the best interests of the child concerned, and other than in exceptional circumstances shall be limited to:
    a. infants being kept with the mother; and
    b. minor children for whom a Detainee under Section 6.3.1.2 is the primary caregiver, and where alternative arrangements cannot reasonably be made.
3. Where minor children are allowed to remain in a facility with their parent Detainee, provision at the Detainee's expense shall be made:

a. for access to:
    i. childcare facilities staffed by qualified persons; and
    ii. child-specific health-care services; and
b. in general, to ensure the child is not treated like a Detainee.

4. In women's detention facilities, there shall be special accommodations for all necessary prenatal and postnatal care and treatment.
    a. Arrangements shall be made wherever practicable for children to be born in a hospital outside the detention facility. If a child is born in the facility, this fact shall not be mentioned in any birth record.
    b. Instruments of restraint shall never be used on women during labor, childbirth, or the immediate recovery.

§ 6.3.11. Rehabilitation and Work

1. Consistent with Section 6.1.1, the treatment of convicted and incarcerated Offenders shall have as one of its purposes to establish in them the will to lead law-abiding and self-supporting lives after their release, and to prepare them to do so. The treatment shall be such as will encourage their self-respect and respect of others, develop their sense of responsibility, and strengthen their moral character.
2. Detainees shall be offered reasonable access to religious or spiritual services, education, vocational guidance and training, social casework, employment counseling, physical development, and similar opportunities—in accordance with the individual needs of each Detainee.
3. Detainees shall have the opportunity to work, subject to a determination of physical and mental fitness by a qualified health-care professional and the need to maintain safety and security of Detainees.
    a. Effort must be made by the Corrections Agency to ensure that sufficient work of a useful nature is available to keep Detainees who so desire:
        i. actively employed for up to eight hours per day, at their discretion; and
        ii. in a field to which they are suited and will contribute toward their rehabilitation.
    b. Compensation shall be subject to standard rules of contract, as it would outside the detention facility—and be at the free disposal of the Detainee—except that:
        i. no Detainee shall be permitted to work for the personal or private benefit of any facility staff; and
        ii. for convicted Offenders, up to two thirds of the income may be offset against any costs or economic sanctions not yet paid, at the discretion of the Court Marshal.
    c. The Corrections Agency, or any contracting party, shall ensure the maintenance of appropriate health and safety mechanisms, employment practices, and workplace insurances.
    d. No juvenile Detainee under 16 years of age shall be allowed to work, with preference instead given to the encouragement of education pursuant to Section 6.3.10.1.

§ 6.3.12. Detainee Discipline

1. Discipline and order shall be maintained in accordance with the rules published pursuant to Subsection 2—with no more restriction than is necessary to ensure safe custody, the secure operation of the detention facility, and a well-ordered community life.
2. A Corrections Agency's rules of detention:
    a. shall be consistent with CoD Chapter 1;
    b. shall make clear:
        i. conduct constituting a disciplinary violation;
        ii. the types and duration of sanctions that may be imposed;
        iii. the due process applied to disciplinary decisions in the first instance; and
        iv. the Detainee's rights under this Article;
    c. shall be written in plain English, maintained with a Registry, and made available in translation as required;
    d. shall be provided to Detainees on arrival and on request;
    e. shall accommodate the religious beliefs and practices and the moral precepts of Detainees to the extent they do not fundamentally conflict with the purposes of detention or incarceration;
    f. shall be applied impartially, without discrimination on the basis of attributes protected under CoD Chapter 1;
    g. may include systems of privileges that encourage good conduct, develop a sense of responsibility, and secure the cooperation of Detainees; and
    h. may not include as sanctions:
        i. any instruments of restraint or use of solitary confinement, except as strictly required to ensure the safety of other Detainees;
        ii. any restriction of access to accommodations, light, food, exercise, sleep, or family contact required by this Code;
        iii. forced labor; or
        iv. collective punishment.
3. Due process under this Section shall include:
    a. appropriate use of searches and seizures, which may not be used to harass, intimidate, or violate reasonable expectations of privacy in a correctional setting;
    b. the right of the Detainee to be informed of the violation of which he or she is accused—in a language he or she understands—and adequate opportunity and resources to mount a defense;
    c. no sanctions shall be applied without proof of the violation established by a preponderance of the evidence;
    d. proportionality between violations and their sanctions;
    e. never to be sanctioned twice for the same violation;
    f. no ex post facto application; and
    g. no sanctions for any conduct that is considered to be the direct result of a Detainee's mental illness or disability.

4. The Corrections Agency shall use, to the extent possible, conflict prevention, mediation, and other alternative dispute resolution mechanisms to prevent disciplinary violations and resolve conflicts.
5. The use of instruments of restraint shall be limited to those situations where they are an essential precaution against escape or injury—and shall be of the least intrusive form and minimum period suitable to the context.
6. Solitary confinement under this Code shall mean any non-consensual confinement alone in a cell for most of the day, with severely restricted movement, and limited or no access to programs, activities, or other inmates.

Annex 4: Coordination and Pathway Arrangements

Coordination

1. Application of Enactments within the Zone (Clauses 2.2.5 and 2.2.6 of the Development Agreement)

1.1. The Parties acknowledge that the identification of Enactments applicable within the Zone, and of those disapplied, modified or otherwise excluded in relation to the Zone, will require ongoing review to ensure legal certainty, operational effectiveness and the consistent implementation of this Agreement.

1.2. For this purpose, the Parties shall establish and maintain a Joint Legislative Review Working Group, comprised of:

1.2.1. the Attorney General, or a representative nominated by the Attorney General;

1.2.2. the Legal Advisor to the Nevis Island Administration, or a representative nominated by the Legal Advisor; and

1.2.3. a representative of each of the Destiny Parties.

1.3. The Parties, acting through the Joint Legislative Review Working Group, shall continuously monitor and review the application and operation within the Zone of Enactments other than Destiny Zone Laws, including their interaction with the legal framework applicable within the Zone pursuant to this Agreement and the Destiny Zone Laws, and shall in particular identify:

1.3.1. any uncertainty as to whether, or to what extent, an Enactment applies within the Zone, or as to its interpretation or application;

1.3.2. any conflict, inconsistency, overlap or duplication arising from the application of an Enactment within the Zone, including where an Enactment addresses the same subject matter as, or otherwise affects the application or operation of, this Agreement or a Destiny Zone Law; or regulates a field which, having regard to the legal framework applicable within the Zone as a whole, is intended to remain unregulated;

1.3.3. any unintended gap or omission in the legal framework applicable within the Zone, including any uncertainty as to whether the absence of regulation of a particular matter under this Agreement or a Destiny Zone Law is intentional; and

1.3.4. any other matter which may adversely affect the coherent, effective or intended operation of the legal framework applicable within the Zone.

1.4. In carrying out such review, the Joint Legislative Review Working Group shall have regard to the objectives of this Agreement, and the legal and operational

framework contemplated by this Agreement and the Destiny Zone Laws, as a coherent whole.

1.5. Where any matter referred to in Clause 1.3 is identified, the Parties shall cooperate in good faith and use their best endeavours to develop and agree, as expeditiously as reasonably practicable, the most appropriate legislative, interpretative, or administrative solution which best gives effect to the objectives of this Agreement, including, where appropriate:

1.5.1. the preparation of proposed amendments through a Destiny Zone Law or other applicable legislative instrument;

1.5.2. the issuance of joint explanatory notes, interpretative guidance, or administrative recommendations concerning the interaction, interpretation or intended scope of the relevant Enactments; or

1.5.3. the adoption of such other measures as the Parties may jointly determine to be appropriate.

1.6. The Joint Legislative Review Working Group shall meet as often as reasonably required, but not less than once every six (6) months, and shall make recommendations to the Parties regarding any legislative, regulatory, administrative or interpretative measures which it considers necessary or desirable to facilitate the effective implementation and operation of the Zone.

2. Criminal Prosecutions

2.1. The Parties expressly acknowledge the powers granted to the Director of Public Prosecutions ("DPP") under Section 65 of the Constitution, pursuant to which the DPP:

2.1.1. shall have standing to prosecute all offences applied under CoD 7.2 and such standing shall take precedence over all those in CoD 7.3.2.1.4.1;

2.1.2. is not subject to:

2.1.2.1. CoD 7.3.2.1.1.3.2 (disqualifications);

2.1.2.2. CoD 7.3.2.1.1.4 (excusal);

2.1.2.3. CoD 7.3.2.1.1.5 (removal);

2.1.2.4. CoD 7.3.2.1.1.6 (replacement); or

2.1.2.5. CoD 7.3.2.1.1.7 (suspensions or barring); and

2.1.3. may, at any time before judgment is rendered, bring a written motion, which must be immediately granted, before any Court constituted under CoD 7.3.2: .

2.1.3.1. to assume the full responsibilities and costs of the Prosecutor, in which case, CoD 7.3.2.1.1.6.2.a shall not apply; or

2.1.3.2. to dismiss the case; but

2.1.4. shall otherwise pursue prosecutions pursuant to CoD 7.3.2.

2.2. A record of all open prosecutions shall be available to the DPP at all times pursuant to CoD 7.3.2.1.8.2.1.b.i.

2.3. The DPP may at any time demand in writing any records pertinent to any criminal case held by a Registrar under CoD 7.3.2.1.8.

2.4. Any Court constituted under CoD 7.3.2 may notify the Prime Minister or the Chairman of the Judicial and Legal Services Commission in writing of concerns to be addressed under Subsections 81(6) through (9) of the Constitution, and such concerns shall receive due consideration.

3. Law Enforcement

3.1. The Parties expressly acknowledge that pursuant to Clause 3.4 of the Agreement, law enforcement activity within the Zone is regulated exclusively by CoD 7, pursuant to which:

3.1.1. the Parties expressly acknowledge that Enforcement Agents as described in CoD 7.3.2.1.7 do not constitute “police” under the Constitution;

3.1.2. the Government Parties commit to ensure that police agencies shall:

3.1.2.1. not allow their officers to enter the Zone while on duty, in official uniform, or bearing a government-issued firearm, except as set out in Clause 3.4 of this Annex; and

3.1.2.2. take reasonable steps to train their members regarding the Zone’s unique jurisdiction; and

3.1.3. for the purposes of this Annex, police agencies shall include:

3.1.3.1. the Royal Saint Christopher and Nevis Police Force;

3.1.3.2. units or members of the Saint Christopher and Nevis Defence Force undertaking any action other than the imminent and essential military defence of the Federation against external threats; and

3.1.3.3. any successor or subsidiary of the above or any other disciplined force maintained or invited by the Government Parties for the purposes of law enforcement.

3.2. The Parties further expressly agree that:

3.2.1. Pursuant to CoD 7.3.2.1.7.2 and CoD 7.3.2.1.8.2, Destiny shall ensure that a list of Enforcement Agents operating within the Zone is available to the police agencies, for the purposes of cooperation and information sharing.

3.2.2. To the extent that matters relating to the right of Enforcement Agents to bear arms, and the corresponding obligations and requirements, as well as the rights and obligations of Enforcement Agencies, are not expressly regulated in the Code of Destiny as in force from time to time, the Parties shall agree appropriate arrangements in respect thereof.

3.3. In respect of his duty to maintain law and order in Saint Christopher and Nevis, the Commissioner of Police shall designate an officer of the rank of inspector or higher as the officer with responsibility for the Zone ("Officer with Zone Responsibility" or "OZR"). The OZR shall serve as the principal point of contact and coordination for all matters concerning the functions and responsibilities of the Royal Saint Christopher and Nevis Police Force in relation to the Zone. This shall include cooperation and information sharing with the Zone's Enforcement Agencies.

3.4. The OZR shall not be subject to the restriction in Annex 4 Clause 3.1.2.1, and shall have discretion to order a temporary exception to that restriction, provided that:

3.4.1. in his or her reasonable opinion, there is a clear and present threat to life that cannot be mitigated by the Zone's Enforcement Agents; or

3.4.2. the exception is ordered in accordance with the standard operating procedures, defined in accordance with Clause 3.6 below;

and, in either case,

3.4.3. it is limited to the minimum scope necessary to mitigate the threat;

3.4.4. all Zone Enforcement Agency lead points of contact are notified as soon as practically possible; and

3.4.5. police agency personnel deployed to the Zone under this exception make best efforts to act in accordance with the norms and standards set out for Enforcement Agents and Coercive Measures within CoD 7.3.2.

3.5. All Enforcement Agencies under CoD 7.3.2.1.7 must use best efforts to:

3.5.1. provide the OZR with a lead point of contact, who shall be a Senior Enforcement Agent pursuant to CoD 7.3.2.1.7.2.3 and shall, given reasonable notice, attend information sharing meetings as required by the OZR;

3.5.2. ensure information on matters that might reasonably affect law and order outside of the Zone is shared proactively with the OZR; and

3.5.3. promptly comply with any request for information issued to them by the OZR or DPP.

3.6. The details concerning the implementation of Clauses 3.2, 3.3, and 3.4 shall be set out in standard operating procedures (SOPs), to be mutually agreed by

the Parties following the Effective Date and amended from time to time by mutual agreement. The Parties shall use their best efforts to agree the SOPs prior to the Activation Date.

4. **Perimeter Control**

4.1. The Parties expressly acknowledge the interest of the Government Parties in ensuring the security of the national border and the minimisation of revenue losses due to customs, pursuant to which:

4.1.1. the Comptroller of Customs and Chief Immigration Officer shall each designate a senior officer ("Customs Officer with Zone Responsibility" and "Immigration Officer with Zone Responsibility", respectively), who shall ensure cooperation and information sharing with relevant authorities at the Zone's designated ports of entry and perimeter crossings;

4.1.2. the Parties shall cooperate to designate ports of entry and perimeter crossing points at which:

4.1.2.1. the Zone shall be responsible for application of Destiny Zone Laws pursuant to CoD 7.2; and

4.1.2.2. the Government Parties shall be responsible for application of such checks as are necessary for immigration, customs and national security; and

4.1.3. Destiny shall use best efforts to ensure that:

4.1.3.1. the Zone's perimeter is protected as soon as is practicable after the Activation Date;

4.1.3.2. appropriate facilities for customs and immigration checks are present at all perimeter crossing points and designated ports of entry;

4.1.3.3. electronic surveillance is provided along the full length of the perimeter and at all designated ports of entry, with recordings retained for not less than 12 weeks and accessible to the Customs Officer with Zone Responsibility, the Immigration Officer with Zone Responsibility, or OZR promptly on request;

4.1.3.4. Immigration and Customs officers are able to verify the efficacy and accuracy of checks undertaken at ports of entry and perimeter crossing points; and

4.1.3.5. Conduct Agreements pursuant to CoD 3.4.1 are underwritten free of charge for persons ordinarily resident in SKN outside of the Zone.

4.2. The Government Parties expressly acknowledge the interest of the Destiny Parties in ensuring that goods and persons are able to reach and enter the

Zone with minimal friction, pursuant to which the Government Parties commit that transit at ports of entry and perimeter crossings shall be as seamless and efficient as reasonably possible.

5. Firearms and Ammunition

5.1. In accordance with Clause 3.5 of the Development Agreement, licences, permits, or other authorisations relating to firearms or ammunition shall be granted provided the applicable security review, background checks, and vetting required under all relevant firearms legislation have been completed by the competent authorities of Saint Christopher and Nevis.

5.2. For the purposes of the administration of the firearms regime within the Zone, the Commissioner of Police of the Royal Saint Christopher and Nevis Police Force shall retain full authority and responsibility. The OZR shall administer firearms-related matters within the Zone, subject to the authority and approval of the Commissioner of Police where required by applicable law.

5.3. Accordingly, the OZR shall receive and prepare consideration of all applications, licences, permits, authorisations, registrations, and other administrative matters relating to firearms and ammunition within the Zone and seek the approval of the Commissioner of Police where required. A material decision shall be provided within a maximum of 30 calendar days following application.

5.4. Without limitation, the OZR shall:

5.4.1. receive and prepare consideration of all applications for licences, permits and other authorisations relating to firearms and ammunition;

5.4.2. seek the approval of the Commissioner of Police to issue, renew, vary, suspend, and revoke licences, permits and other authorisations in accordance with relevant firearms legislation;

5.4.3. establish and maintain a firearms register;

5.4.4. monitor compliance with the firearms regime applicable within the Zone;

5.4.5. establish or designate secure facilities for the storage, safekeeping, and temporary custody of firearms and ammunition within the Zone;

5.4.6. cooperate and exchange information with the Commissioner of Police and other competent authorities of Saint Christopher and Nevis, and provide such reports, records, and information as may be lawfully required; and

5.4.7. perform such other functions as may be delegated to him by the Commissioner of Police.

5.5. Licences, permits, and other authorisations shall not be withheld without justified individual reason based on personal circumstances of the applicant. The Government Parties explicitly acknowledge that the provision of duly registered Enforcement Agency services pursuant to CoD 7.3.2 shall constitute a good reason for importing, purchasing, acquiring, and possessing a firearm, provided that no individual circumstances exist which would justify the refusal of such licence, permit, or authorisation to a specific Enforcement Agent.

5.6. The firearms register shall be maintained in accordance with standards substantially equivalent to those applicable under the relevant firearms legislation, and shall be made available to the Commissioner of Police and other competent authorities of Saint Christopher and Nevis in accordance with applicable law.

6. Employee Protections

6.1. The Government Parties shall jointly appoint a Labour Relations Officer for the Zone.

6.2. The Labour Relations Officer shall work in close cooperation with the Destiny Parties and the Property Owners to promote employee protection standards throughout the Zone.

6.3. The Labour Relations Officer shall be responsible for monitoring actual employment practices throughout the Zone and ensuring that such practices comply with the employee protection standards established under this Agreement, in particular the Code of Destiny. In carrying out this responsibility, the Labour Relations Officer shall raise awareness of applicable standards, provide guidance, advice, and support to employers and employees, address concerns regarding potential non-compliance, and facilitate appropriate corrective action where necessary.

6.4. The Destiny Parties shall work together closely with the Labour Relations Officer, to determine how to provide employees in the Zone with information about optional social insurance, as provided for in Clause 3.7.

7. **Fishery**

7.1. The Parties agree that vessels ordinarily berthed in the Federation of Saint Christopher and Nevis outside the Destiny Special Sustainability Zone shall be permitted to access the waters above the seabed leased to Destiny pursuant to Clause 1.4.2 of this Development Agreement for commercial, artisanal, and recreational fishing purposes. Such access shall be subject only to restrictions that are no more onerous than those applicable to vessels ordinarily berthed within the Destiny Special Sustainability Zone.

7.2. The Parties agree that vessels ordinarily berthed within the Destiny Special Sustainability Zone shall be permitted to access all the waters of the Federation of Saint Christopher and Nevis for artisanal and recreational fishing purposes. Such access shall be subject only to restrictions that are no more onerous than

those applicable to vessels ordinarily berthed in the Federation of Saint Christopher and Nevis outside the Destiny Special Sustainability Zone.

8. Telecommunications

8.1. The Parties commit to coordinating in good faith on all matters relating to spectrum management and the interception regime, with a view to ensuring their effective and seamless operation.

9. Standard Operating Procedures

9.1. The Parties shall, as soon as reasonably practicable after the Effective Date, use their best endeavours to jointly develop, agree, adopt, and implement such Standard Operating Procedures as may be necessary or desirable for the effective implementation of this Annex and the discharge of their respective responsibilities hereunder.

9.2. Such Standard Operating Procedures shall, amongst other things, ensure clear operational interfaces, effective coordination, interoperability, and the efficient exercise of the respective functions of the Parties.

9.3. The Parties shall keep such Standard Operating Procedures under periodic review and amend them from time to time as may be necessary.

9.4. The Standard Operating Procedures shall include appropriate arrangements for the Government Parties to request the provision of census and other statistical data, and the Destiny Parties commit to creating internal mechanisms for the timely and accurate collection and provision of such data.

9.5. The Parties shall coordinate in good faith regarding the appointment of officers for specific topics. In considering the appointment, continuation in office, or replacement of such officer, the appointing Party shall give due consideration to any reasonable concerns raised by another Party, with a view to maintaining effective cooperation and coordination between the Parties.

Pathways

10. Judicial Review

10.1. The Parties expressly acknowledge and agree to the original and appellate jurisdictions of both the Eastern Caribbean Supreme Court (“ECSC”) sitting as the High Court and His Majesty in Council (“Constitutional Courts”), as determined by Sections 18, 36, 96, 97, 98, 99, and 112 of the Constitution (“Judicial Rights”).

10.2. Notwithstanding the original jurisdiction of the Constitutional Courts, a person holding a relevant interest that is affected by an alleged contravention of a Judicial Right and already engaged in relevant proceedings under CoD 7.3.2 may bring:

10.2.1. a motion pursuant to CoD 7.3.2.4.2.1.2.d or CoD 7.3.2.5.1.6.2.b.ii;

10.2.2. a petition pursuant to CoD 7.3.2.5.3.2.3.a; or

10.2.3. an appeal pursuant to CoD 7.3.2.5.2.

10.3. A Court constituted under CoD 7.3.2, upon receiving a valid application under Annex 4 Clause 10.2, shall without delay refer the question to the relevant Constitutional Court.

10.4. A Constitutional Court may at any time demand in writing any records pertinent to a case under its jurisdiction held by a Registrar under CoD 7.3.2.1.8.

10.5. A litigant shall enjoy a general right of appeal to the ECSC's Court of Appeal, once the relevant appeals processes under CoD 6.2 and 7.3.2 have been exhausted, absent a contractual waiver of that right.

11. Judicial Appointments

11.1. All judges exercising judicial functions in the Zone shall be judges (whether serving on a permanent or acting basis) of the ECSC, appointed through the Judicial and Legal Services Commission ("JLSC") in accordance with the Supreme Court Order, and shall meet the same qualification requirements and enjoy the same security of tenure, remuneration (on terms no less favourable), privileges, and protections as such judges.

11.2. The Parties shall engage with, and where appropriate liaise with, the ECSC and the JLSC in relation to the effective functioning of the courts of the Zone and the judicial services provided therein, including, without limitation:

11.2.1. the potential designation of the Zone as a dedicated ECSC circuit, or the establishment of a similar arrangement;

11.2.2. in connection with any such circuit or arrangement, the putting in place of appropriate coordination arrangements relating to the administration of justice in the Zone;

11.2.3. the designation or assignment of judges to such circuit or arrangement;

11.2.4. the development and availability of a pool of suitably qualified individuals appointed in accordance with applicable constitutional procedures, who may serve as acting judges in the courts of the Zone as and when required;

11.2.5. the provision of appropriate facilities, administrative support, and remuneration arrangements for judicial services in the Zone, consistent with Clause 11.1 of this Annex; and

11.2.6. the conduct of proceedings in accordance with the Code of Destiny, to the extent consistent with the Constitution and the applicable law governing the ECSC.

11.3. To the extent that magistrates exercise judicial functions in the Zone, they shall be appointed in accordance with Section 83 of the Constitution and shall meet

the applicable qualification requirements and enjoy such security of tenure, remuneration, protections, and conditions of service as are required to ensure compliance with constitutional standards.

11.4. The Parties shall liaise with the Public Service Commission with a view to supporting and facilitating the identification, preparation, and availability of suitably qualified persons, including by proposing candidates, for appointment as magistrates to serve in the Zone.

12. Legislative Ratification

12.1. The Parties expressly acknowledge the powers granted to Parliament under Section 37 of the Constitution, pursuant to which:

12.1.1. the outcome of any proposal to amend the CoD shall be made public, pursuant to CoD 4.4.1, which shall constitute a proposed amendment to the Destiny Zone Laws; and

12.1.2. the Government Parties commit their best efforts:

12.1.2.1. to achieve ratification of any proposed amendment to the Destiny Zone Laws that passes the requirements of CoD 4.4.3; and

12.1.2.2. no amendment to the Destiny Zone Laws is ratified that does not first pass the requirements of CoD 4.4.3.

12.2. For the avoidance of doubt, no proposed amendment to the CoD shall have the force of law as a Zone Law unless and until ratified by the National Assembly and the Nevis Island Assembly; prior to such ratification it may operate only as a private contractual rule among consenting persons to the extent lawful.

13. Environmental Protection and Coordination

13.1. The NIA shall appoint an Environmental Protection Officer (the “EPO”) to receive and review the studies, assessments, plans, and reports prepared by the Destiny Parties pursuant to Annex 7, and to provide observations and recommendations to the relevant Parties.

13.2. Within the Area, the functions of the Minister, Council, Department, Director, and authorised officers under the National Conservation and Environmental Management Act, 2025, to the extent applicable pursuant to Annex 5, shall be exercised by the EPO.

13.3. The EPO’s review, observations, and recommendations shall not constitute any approval or condition precedent to the commencement or continuation of development. Nothing in this provision shall limit judicial rights of the Parties.

13.4. The Government Parties confirm that there are no protected areas or equivalent conservation designations within the Area or Expansion Area, and shall ensure that none are established. Saddle Hill Fort shall remain subject to the protections in Annex 7.

Annex 5: Applicability of Enactments

1. Enactments in force in SKN at the Activation Date

1.1. The Attorney General of the SKN Government shall prepare, as of the Activation Date, a list of all Enactments in force in Saint Christopher and Nevis at the Activation Date, to the extent that they apply in Nevis.

2. Enactments Fully or Partially Disapplied or Amended, pursuant to Clause 2.2.5.1 of the Development Agreement

2.1. Fully Disapplied Acts:

2.1.1. Governance, Justice and Public Administration: Chapter 2.03;

2.1.2. Immigration, Ports, Marine, and Aviation: Chapters 6.05, 6.06, 7.08, 7.09, 7.10, 7.11, 8.05;

2.1.3. Medical and Health: Chapters 9.01, 9.02, 9.05, 9.07, 9.12, 9.16, 9.19, 9.22;

2.1.4. Real Property: Chapters 10.01, 10.19, 10.22;

2.1.5. Environment: Chapters 11.01, 11.05, 11.06, 11.07;

2.1.6. Education: Chapters 13.01, 13.04, 13.06, 14.01, 14.02, 14.04, 14.05, 14.08, 14.10, 14.13;

2.1.7. Roads and Vehicles: Chapters 15.01, 15.02, 15.03, 15.04, 15.05;

2.1.8. Communications and Utilities: Chapters 16.03, 16.04, 16.05;

2.1.9. Trade, Commerce, Industry, Employment: Chapters 18.01, 18.03, 18.07, 18.09, 18.12, 18.17, 18.20, 18.21, 18.23, 18.24, 18.31, 18.33, 18.34, 18.46, 18.47;

2.1.10. Public Safety and Emergency: Chapters 19.04, 19.13, 19.16, 19.18;

2.1.11. Public Finance and Development: Chapters 20.03, 20.05, 20.06, 20.07, 20.09, 20.10, 20.11, 20.14, 20.17, 20.20, 20.21, 20.22, 20.23, 20.29, 20.32, 20.33, 20.38, 20.40, 20.41, 20.42, 20.43, 20.45, 20.47, 20.48, 20.51, 20.52, 20.54, 20.56, 20.57, 20.59, 20.61, 20.62;

2.1.12. General Administration: Chapters 23.04, 23.07, 23.08, 23.11, 23.13, 23.18, 23.20, 23.21, 23.22, 23.24, 23.26, 23.31, 23.32, 23.35; and

2.1.13. Act No. 16 of 2010, as amended.

2.2. All Ordinances are disapplied other than Chapters 7.01(N), 7.03(N), 7.04(N), 7.05(N), 7.07(N), 7.08(N), 7.09(N), 7.10(N), which shall continue to apply.

2.3. Partially Disapplied or Amended Enactments:

2.3.1. The Social Security Act shall be interpreted in the context of Clause 3.7 of this Agreement.

2.3.2. In relation to the Immigration Act, Cap. 6.02, Part III (Work Permits) and §§ 21 to 24 of the Third Schedule (Restriction as to Employment or Occupation of Visitors and Immigrants *et seq.*) shall not apply to work undertaken wholly within the Zone.

2.3.3. Section 60(2) of the Proceeds of Crime and Asset Recovery Act, 2020, shall read, "The powers conferred by this Part are exercisable in relation to any property, including cash, subject to a criminal warrant issued in connection with the property" and any reference in Part III to a Court shall mean a Court established pursuant to CoD 6.2.

2.3.4. With respect to the Public Holidays Act, the following provisions shall be disapplied in relation to the Zone:

2.3.4.1. in Section 2, the words *"shops or stores where goods are sold"*;

2.3.4.2. in Section 6(b), the words *"up to the hour of nine o'clock"*; and

2.3.4.3. Section 8 in its entirety.

2.3.5. The provisions of the substantive criminal law of the Federation of Saint Christopher and Nevis, as provided for in CoD 7.2 (Annex 3 of this Agreement), shall:

2.3.5.1. apply, which provisions for the avoidance of doubt shall exclude offences related to compliance with administrative provisions not applicable under this Agreement;

2.3.5.2. apply for the purposes of defining and providing sentencing limits for criminal offences, except that no penalty shall include hard labour, corporal punishment, or the death sentence, and the maximum penalty for an offence punishable by death is imprisonment for life; and

2.3.5.3. otherwise be subject to the Criminal Procedure Code of the CoD.

2.3.6. The Vehicles and Road Traffic Act, Cap. 15.06, and regulations made thereunder, shall be disapplied to the extent provided in Clause 3.11 of the Development Agreement.

2.3.7. In recognition of the environmental commitments and compliance framework under Annex 7, the National Conservation and Environmental Management Act, 2025 (Act No. 26 of 2025) shall apply within the Area subject to the following:

2.3.7.1. Sections 61(4), 62(3) - (4), 70 - 75, 78 - 79, 88 - 97, 104 - 105, 115(2), and 116 - 122 shall be disapplied.

2.3.7.2. Section 80 shall be disapplied in respect of development and environmental works within the Area.

2.3.7.3. In section 103(2), “for its approval, with or without amendments” shall be replaced by “for its review and comment”, and “approved” in section 103(3)(b) shall be omitted.

2.3.7.4. Sections 98 and 99 shall apply only where an activity poses an imminent risk of serious environmental harm or danger to human life. Any direction to cease activity shall be limited to the activity giving rise to that risk and shall lapse after seventy-two (72) hours unless confirmed by a court of competent jurisdiction.

2.3.7.5. No prior environmental permit, licence, consent, approval, clearance, notice, or consultation under this Act or any instrument made thereunder shall be required for development or works within the Area. Annexes 4 and 7 shall apply instead.

2.3.7.6. No offence or administrative penalty shall arise solely from failure to obtain an authorization disapplied under this Clause. Any appeal provided for under this Act against a decision of the EPO shall lie to a court of competent jurisdiction.

3. Confirmatory Provisions

3.1. The inclusion or omission of any Enactment in Clauses 2.1 to 2.3 above shall not be construed as limiting, qualifying, or otherwise affecting the operation of Clause 2.2.5.2 of the Development Agreement, which applies according to its terms irrespective of whether an Enactment is identified in this Annex.

3.2. The Code of Destiny constitutes the exclusive legal framework governing civil and criminal matters, respectively, within the Zone, and other Enactments relating to such matters have no application within the Zone.

Annex 6: Destiny Development Timelines, Milestones, and Commitments

In addition to the commitments set out in Clauses 4.1 to 4.3, Destiny herewith commits to use all reasonable efforts to meet the following development timelines and milestones:

Timeline	**Milestone**
6 months after the Activation Date	Start of Construction
18 months after the Activation Date	Total capex investment of at least US$50 million (United States Dollars fifty million)
30 months after the Activation Date	Total capex investment of at least US$100 million (United States Dollars one-hundred million)
42 months after the Activation Date	Total capex investment of at least US$150 million (United States Dollars one-hundred-and-fifty million)
54 months after the Activation Date	Total capex investment of at least US$200 million (United States Dollars two-hundred million)
66 months after the Activation Date	Total capex investment of at least US$250 million (United States Dollars two-hundred-and-fifty million)

Review/audit procedure and actions in case of failure to meet a milestone:

1. At the latest 1 (one) month after Start of Construction, Destiny shall notify the NIA of that milestone and provide reasonable evidence that construction has actually been started.

2. No later than two (2) months following the conclusion of each milestone period set forth in the table above, Destiny shall provide the NIA with substantiated documentation evidencing that the cumulative capital expenditure at that milestone exceeds the required threshold, according to International Financial Reporting Standards.

3. Within one (1) month of receipt of such documentation, the NIA shall notify Destiny in writing either (i) of its acceptance of the documentation and corresponding acknowledgement of milestone achievement, or (ii) of its decision to appoint, at its own expense, an independent auditor to conduct a further review of the documentation and underlying capital expenditure. Any such audit shall be completed within one (1) month of the appointment.

4. Destiny shall cooperate with such auditor in good faith.

5. If, following such review, the NIA forms the view, acting reasonably and in good faith, that Destiny has not fully and/or timely met its milestone obligations above, other than due to a Force Majeure Event, as defined in Clause 9.3 of this Agreement, the NIA shall issue a written notice to Destiny specifying the nature of the alleged breach. Destiny shall have a period of thirty (30) days from the date of such notice to submit a written response, including any substantiating information or evidence refuting or explaining the alleged breach.

6. If no such written notice is received by Destiny within the period specified, the achievement of the milestone in question shall be deemed acknowledged by the NIA.

7. If Destiny acknowledges the occurrence of a breach in its response to a written notice pursuant to Annex 6 Clause 5 above, it shall, together with such response, submit to the NIA a written remedial action plan detailing the measures it will undertake to cure the breach. Such plan shall include a timeline for full remediation, which shall not exceed ninety (90) days from the date of Destiny's response, unless otherwise agreed in writing.

8. If Destiny:

   (i) does not acknowledge the alleged breach; or

   (ii) fails to submit a remedial action plan in accordance with Annex 6 Clause 7; or

   (iii) fails to implement a remedial action plan it has submitted within the agreed timeframe,

   then the NIA shall have the right to refer the matter to dispute resolution pursuant to Clause 9.2 of this Agreement, to determine damages.

9. If the matter is not resolved through mediation in accordance with Clause 9.2.2 of this Agreement, the dispute shall be referred to arbitration. The arbitral tribunal shall determine whether the alleged breach occurred and, if so, whether such breach arose due to Destiny's failure to exercise reasonable efforts to comply with its obligations under this Annex.

   If the tribunal finds that Destiny did not use reasonable efforts and that a breach has occurred, it may order Destiny to pay liquidated damages amounting to up to 5% of the difference between capex committed by that milestone and capex actually invested by then.

10. The Parties represent and warrant that the foregoing limitation on damages constitutes a reasonable and proportionate pre-estimate of loss intended to safeguard the Government Parties' legitimate interest in the proper performance of Destiny's obligations under this Annex, and does not constitute a penalty.

11. The NIA shall have a duty to inform the SKN Government of any matter arising under this Annex 6.

Annex 7: Development Standards

1. **Baseline studies and transparency**

1.1. A Destiny Party shall engage qualified, independent experts to deliver a thorough:

1.1.1. economic impact assessment, including estimates of impact on national GDP, national job creation, and revenues of the Government Parties;

1.1.2. mobility study, including ten-year estimates of increased traffic through national transport and logistics infrastructure outside of the Zone;

1.1.3. heritage site inventory, with geolocation of any sites meeting the criteria of Clause 3 of this Annex;

1.1.4. hydrology assessment, including hydrodynamic modelling of the impact of proposed coastal development or water retention within the Zone and potential storm surge and tsunami risks; and

1.1.5. terrestrial and marine biodiversity study, including estimates of endangered species habitats within the Zone and of marine habitats within one kilometre offshore from the Zone's coastline.

1.2. A Destiny Party shall cause the studies in Annex 7 Clause 1.1 to be:

1.2.1. delivered prior to the Activation Date;

1.2.2. subject to peer review by at least one independent expert;

1.2.3. submitted along with the peer review to the NIA; and

1.2.4. published online within thirty (30) days of submission to the NIA, together with the peer reviews and any observations then received from the EPO, with subsequent observations published upon receipt.

1.3. A Destiny Party shall publish online under a creative commons licence any other substantial data related to heritage sites, ecosystems, or the geology or hydrology of Nevis or its surrounding waters obtained during the development process.

1.4. Following the studies in Annex 7 Clause 1.1 and in pursuit of the standards in Annex 7 Clause 2, a Destiny Party shall create an environmental management plan that is:

1.4.1. built to the standard of ISO 14001:2015;

1.4.2. reviewed every 2 years by an independent expert for ten years from the Activation Date; and

1.4.3. published online, with the independent expert reviews also published after a 120-day remediation period.

1.5. With respect to the draft environmental and disaster management plan:

1.5.1. The Destiny Parties shall publish the draft environmental management plan in accessible form, with a summary of anticipated and cumulative environmental impacts, material alternatives, and mitigation measures, sufficiently early to allow for public observations before its adoption.

1.5.2. The EPO shall provide a reasonable opportunity for public observations and publish a summary of the observations received, their consideration, and the resulting decisions. This process shall apply to material revisions and subsequent activities likely to have significant environmental impacts not reasonably addressed by the plan.

1.5.3. No governmental approval shall be required pursuant to this Clause.

2. Construction, biodiversity, and resilience standards

2.1. A Destiny Party shall ensure the master planning of the development:

2.1.1. is undertaken by an international, tier one architect of record in line with the principles of the Zone and the environmental management plan described in Clause 1.4 of this Annex; and

2.1.2. substantially conforms in its construction and maintenance to either the Caribbean Uniform Building Code (CUBiC), the Miami-Dade County Uniform Building Code, the OECS Building Code, the ICC Performance Code for Buildings and Facilities (ICCPC), or the Saint Christopher and Nevis Building Code.

2.2. A Destiny Party shall make all reasonable efforts to ensure that the development:

2.2.1. integrates nature-based solutions that encourage biodiversity and the sustainable spread of marine and terrestrial flora and fauna;

2.2.2. reasonably minimises the upstream and downstream impacts of coastal development; and

2.2.3. does not import flora or fauna that constitutes a danger to the natural ecology of the Island of Nevis or the wider Federation of Saint Christopher and Nevis through communicable disease or predation.

2.3. A Destiny Party shall ensure that within ten years of the Activation Date:

2.3.1. at least 70% of the development’s baseload water usage shall be from non-groundwater sources;

2.3.2. at least 70% of the development’s baseload energy generation shall be from non-fossil fuel sources; and

2.3.3. all waste produced within the Zone shall be handled through a process of recycling, repurposing, and/or exporting such waste from the Island of Nevis or in such other way as may be agreed by the Destiny Parties with the NIA from time to time.

2.4. To enable the Destiny Parties to rapidly meet the sustainable water goals under this Annex, works within the Area may include the diversion, channeling, storage, and management of ghauts and other natural drainage, including reservoirs and related infrastructure, without prior environmental authorization under the National Conservation and Environmental Management Act, 2025.

3. Heritage site standards

3.1. In respect of pre-1900 masonry within the Zone (including but not limited to the Saddle Hill Fort), any contiguous portion of which stands at least 1.5 metres from the ground, a Destiny Party shall ensure that such masonry is:

3.1.1. unmodified except as may be required to ensure its structural integrity, stability, and safety; and

3.1.2. either left undisturbed or integrated respectfully into gardens, parks, hospitality features, or other amenities.

3.2. In respect of any human remains, any related artefacts in their immediate vicinity, and their associated grave markers found in the Area and disturbed by the development, a Destiny Party shall ensure that:

3.2.1. in the case of the remains of five or fewer persons, the remains will be respectfully exhumed and transferred to the NIA for reinterment;

3.2.2. in the case of a burial site that contains the remains of more than five persons in close proximity, reasonable efforts are made to leave the area either undisturbed or to keep it as a garden or park, and if such is not reasonably practicable the remains will be respectfully exhumed and transferred to the NIA for reinterment; and

3.2.3. any exhumation of remains shall be supervised by a qualified historian, who shall provide a thorough written report to the NIA on the location and context of the remains.

3.3. In respect of any site in the Area disturbed by the development in which Amerindian or other archaeological artefacts are identified, the Destiny Parties shall ensure that a thorough excavation and cataloguing of the artefacts is performed and delivered to the NIA in accordance with preservation and excavation standards to be established and implemented by the Destiny Parties with the expert appointed pursuant to Clause 3.4 below and in consultation with the NIA.

3.4. The Destiny Parties shall retain for at least ten years from the Activation Date an individual to oversee commitments under this Clause 3, who shall have:

3.4.1. a master's degree or similar in the fields of history or archaeology; and

3.4.2. familiarity with the cultures and history of the Caribbean.

Annex 8: Sovereign Guarantee

1. Guarantee

1.1. *Unconditional and Irrevocable Undertaking:* Each of the Government Parties (individually an "Obligor") hereby mutatis mutandis unconditionally and irrevocably guarantees in favour of each of the Destiny Parties the full and punctual performance, observance, and discharge by the Government Parties of all obligations, commitments, covenants, and liabilities contained in or arising under this Agreement.

1.2. *Scope of Guarantee:* This guarantee (the "Guarantee") covers all monetary and non-monetary obligations, damages, losses, claims, costs, and expenses for which each Obligor is liable under this Agreement, including but not limited to the due payment of any sums, damages, indemnities, penalties, fees, or any other amounts which may become due and owing to any of the Destiny Parties.

2. Nature of Obligors' Obligations

2.1. *Primary Obligation:* Each Obligor's obligations under this Guarantee constitute direct, primary, and independent obligations to each of the Destiny Parties. Each Obligor shall be liable as if it were the principal debtor in respect of both Obligors' obligations, and neither of the Destiny Parties shall be required, as a condition precedent to enforcing any of each Obligor's obligations, to take any action or obtain any judgment against either Obligor or any other person or entity.

2.2. *No Set-Off or Counterclaim:* Each Obligor shall make all payments due under this Guarantee in full and without any set-off, counterclaim, deduction, or withholding of any kind except as required by applicable law. If a deduction or withholding is required by law, each Obligor shall promptly pay an additional amount such that the Destiny Party concerned receives the full amount it would have received had no deduction or withholding been required.

2.3. *Continuing Obligation:* The obligations of each Obligor under this Guarantee shall be continuing in nature and shall remain in full force and effect until all obligations of each Obligor under this Agreement have been fully discharged or until this Guarantee is expressly released in writing by both Destiny Parties.

3. Waiver of Defences

Each Obligor hereby waives any defence, set-off, or counterclaim that the Obligor could raise, and any right to require any of the Destiny Parties to proceed first against either Obligor or any other party. The Obligor's obligations shall not be affected by:

3.1. the insolvency, bankruptcy, liquidation, reorganisation, dissolution, or any similar proceeding of either Obligor or any element of their Governmental structures;

3.2. any extension, amendment, termination, or other variation of this Agreement;

3.3. the release, settlement, or discharge by any of the Destiny Parties of any obligation owed by either Obligor or any third party; or

3.4. any other circumstance that might otherwise operate to reduce or release either Obligor from its obligations under this Guarantee.

4. Enforcement and Remedies

4.1. *Rights of the Destiny Parties:* In the event of any default by either Obligor under this Agreement, each Destiny Party shall have the right to demand performance or payment directly from either Obligor, without prior notice to or consent of either Obligor. Each Destiny Party may bring an action or claim under this Guarantee without exhausting any rights or remedies it may have against either Obligor.

4.2. *Specific Performance and Injunctive Relief:* Without prejudice to any other rights or remedies available, each Destiny Party shall have the right to seek specific performance, injunctive relief, or any other equitable remedy as may be available under the law of England and Wales, recognising that monetary damages may not fully compensate for loss arising from a breach of this Guarantee.

Annex 9: Rules of Interpretation

1. Clause, annex, and paragraph headings shall not affect the interpretation of this Agreement.

2. References to Clauses and Annexes are to clauses and annexes to this Agreement.

3. The Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.

4. A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.

5. Definitions set out in the Authorisation Act shall also apply to this Agreement, unless the context otherwise requires.

6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

8. A person includes a natural person, corporate, or unincorporated body (whether or not having separate legal personality).

9. This Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors, and permitted assigns, and references to any Party shall include that Party's personal representatives, successors, and permitted assigns.

10. Unless expressly provided otherwise in this Agreement, a reference to writing or written includes email but excludes fax.

11. Any words following the terms *including*, *include*, i*n particular*, *for example*, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

12. Where the context permits, *other* and *otherwise* are illustrative and shall not limit the sense of the words preceding them.

13. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

14. Any obligation on a party not to do something includes an obligation not to authorise or materially support such a thing being done.

Annex 10: Notices

1. Any notice given to a Party under or in connection with this Agreement:
    a. shall be in writing and in English;
    b. shall be sent to the relevant Party for the attention of the contact and to the address or email address specified in Clause 2 below or substituted by that Party in accordance with the provisions of Clause 3 below;
    c. shall be sent by a method listed in Clause 4 below; and
    d. unless proven otherwise is deemed received as set out in Clause 4 and Clause 5 below if prepared and sent in accordance with this Annex 10.
2. The addresses and email addresses for service of notice are:
    a. SKN Government:
        i. To the attention of: the Cabinet Secretary to the Federal Government;
        ii. Address: Government Headquarters, PO Box 186, Church Street, Basseterre, St Christopher;
        iii. Email address: cabinetsec@gov.kn;
    b. NIA:
        i. To the attention of: Office of the Premier;
        ii. Address: Social Security Building, Pinney's Estate, Nevis
        iii. Email address: prem.office@niagovkn.com;
    c. Destiny International:
        i. To the attention of: Olivier Janssens;
        ii. Address: 41-43 Victoria Street, Douglas, Isle of Man, IM1 2LF;
        iii. Email address: notices@destiny.com; cc: olivier@destiny.com, graeme@destiny.com
    d. SN Ltd:
        i. To the attention of: Olivier Janssens;
        ii. Address: Government Road, Charlestown, PO Box 175, Nevis;

iii. Email address: notices@destiny.com; cc: olivier@destiny.com, graeme@destiny.com.

3. A Party may change its details for service of notices as specified in Clause 2 of this Annex 10 by giving notice in writing to the other Parties. Any change notified pursuant to this Clause 3 shall take effect at 09.00 am (local time in the Federation of Saint Christopher and Nevis) on the later of:

   a. the date (if any) specified in the notice as the effective date for the change; or

   b. the date five Business Days after deemed receipt of the notice.

4. Delivery methods, and deemed time of receipt, for sending a notice to a Party under this Agreement shall be as follows:

   a. delivery by hand, with deemed time of receipt at the time of handover or deposit at the address;

   b. delivery by courier, with deemed time of receipt upon delivery by the courier to the address; or

   c. delivery by email, with deemed time of receipt at the time of transmission.

5. If deemed receipt under Clause 4 of this Annex 10 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. Business hours shall mean 09.00 am to 04.00 pm local time in the place of receipt Monday to Friday on a day that is not a public holiday in the place of receipt.